



IOWA ADMINISTRATIVE BULLETIN

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Pages 1721 to 1788

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PREFACE

The Iowa Administrative Bulletin is published biweekly in pamphlet form pursuant to Iowa Code chapters 2B and 17A and contains Notices of Intended Action on rules, Filed and Filed Emergency rules by state agencies.

It also contains Proclamations and Executive Orders of the Governor which are general and permanent in nature; Economic Impact Statements to proposed rules and filed emergency rules; Objections filed by Administrative Rules Review Committee, Governor or the Attorney General; and Delay by the Committee of the effective date of filed rules; Regulatory Flexibility Analyses and Agenda for monthly Administrative Rules Review Committee meetings. Other “materials deemed fitting and proper by the Administrative Rules Review Committee” include summaries of Public Hearings, Attorney General Opinions and Supreme Court Decisions.

The Bulletin may also contain Public Funds Interest Rates [12C.6]; Workers’ Compensation Rate Filings [515A.6(7)]; Usury [535.2(3)“a”]; Agricultural Credit Corporation Maximum Loan Rates [535.12]; and Regional Banking—Notice of Application and Hearing [524.1905(2)].

PLEASE NOTE: *Italics* indicate new material added to existing rules; ~~strike-through letters~~ indicate deleted material.

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Legislative Services Agency
Capitol Building
Des Moines, IA 50319
Telephone: (515)281-3568

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PUBLIC HEALTH DEPARTMENT[641]"umbrella"

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CITATION of Administrative Rules

The Iowa Administrative Code shall be cited as (agency identification number) IAC
(chapter, rule, subrule, lettered paragraph, or numbered subparagraph).

441 IAC 79	(Chapter)
441 IAC 79.1(249A)	(Rule)
441 IAC 79.1(1)	(Subrule)
441 IAC 79.1(1)"a"	(Paragraph)
441 IAC 79.1(1)"a"(1)	(Subparagraph)

The Iowa Administrative Bulletin shall be cited as IAB (volume), (number), (publication
date), (page number), (ARC number).

Schedule for Rule Making 2004

NOTICE SUBMISSION DEADLINE	NOTICE PUB. DATE	HEARING OR COMMENTS 20 DAYS	FIRST POSSIBLE ADOPTION DATE 35 DAYS	ADOPTED FILING DEADLINE	ADOPTED PUB. DATE	FIRST POSSIBLE EFFECTIVE DATE	POSSIBLE EXPIRATION OF NOTICE 180 DAYS
Jan. 2 '04	Jan. 21 '04	Feb. 10 '04	Feb. 25 '04	Feb. 27 '04	Mar. 17 '04	Apr. 21 '04	July 19 '04
Jan. 16	Feb. 4	Feb. 24	Mar. 10	Mar. 12	Mar. 31	May 5	Aug. 2
Jan. 30	Feb. 18	Mar. 9	Mar. 24	Mar. 26	Apr. 14	May 19	Aug. 16
Feb. 13	Mar. 3	Mar. 23	Apr. 7	Apr. 9	Apr. 28	June 2	Aug. 30
Feb. 27	Mar. 17	Apr. 6	Apr. 21	Apr. 23	May 12	June 16	Sept. 13
Mar. 12	Mar. 31	Apr. 20	May 5	May 7	May 26	June 30	Sept. 27
Mar. 26	Apr. 14	May 4	May 19	May 21	June 9	July 14	Oct. 11
Apr. 9	Apr. 28	May 18	June 2	June 4	June 23	July 28	Oct. 25
Apr. 23	May 12	June 1	June 16	June 18	July 7	Aug. 11	Nov. 8
May 7	May 26	June 15	June 30	July 2	July 21	Aug. 25	Nov. 22
May 21	June 9	June 29	July 14	July 16	Aug. 4	Sept. 8	Dec. 6
June 4	June 23	July 13	July 28	July 30	Aug. 18	Sept. 22	Dec. 20
June 18	July 7	July 27	Aug. 11	Aug. 13	Sept. 1	Oct. 6	Jan. 3 '05
July 2	July 21	Aug. 10	Aug. 25	Aug. 27	Sept. 15	Oct. 20	Jan. 17 '05
July 16	Aug. 4	Aug. 24	Sept. 8	Sept. 10	Sept. 29	Nov. 3	Jan. 31 '05
July 30	Aug. 18	Sept. 7	Sept. 22	Sept. 24	Oct. 13	Nov. 17	Feb. 14 '05
Aug. 13	Sept. 1	Sept. 21	Oct. 6	Oct. 8	Oct. 27	Dec. 1	Feb. 28 '05
Aug. 27	Sept. 15	Oct. 5	Oct. 20	Oct. 22	Nov. 10	Dec. 15	Mar. 14 '05
Sept. 10	Sept. 29	Oct. 19	Nov. 3	Nov. 5	Nov. 24	Dec. 29	Mar. 28 '05
Sept. 24	Oct. 13	Nov. 2	Nov. 17	***Nov. 17***	Dec. 8	Jan. 12 '05	Apr. 11 '05
Oct. 8	Oct. 27	Nov. 16	Dec. 1	Dec. 3	Dec. 22	Jan. 26 '05	Apr. 25 '05
Oct. 22	Nov. 10	Nov. 30	Dec. 15	***Dec. 15***	Jan. 5 '05	Feb. 9 '05	May 9 '05
Nov. 5	Nov. 24	Dec. 14	Dec. 29	Dec. 31	Jan. 19 '05	Feb. 23 '05	May 23 '05
Nov. 17	Dec. 8	Dec. 28	Jan. 12 '05	Jan. 14 '05	Feb. 2 '05	Mar. 9 '05	June 6 '05
Dec. 3	Dec. 22	Jan. 11 '05	Jan. 26 '05	Jan. 28 '05	Feb. 16 '05	Mar. 23 '05	June 20 '05
Dec. 15	Jan. 5 '05	Jan. 25 '05	Feb. 9 '05	Feb. 11 '05	Mar. 2 '05	Apr. 6 '05	July 4 '05
Dec. 31	Jan. 19 '05	Feb. 8 '05	Feb. 23 '05	Feb. 25 '05	Mar. 16 '05	Apr. 20 '05	July 18 '05

PRINTING SCHEDULE FOR IAB

<u>ISSUE NUMBER</u>	<u>SUBMISSION DEADLINE</u>	<u>ISSUE DATE</u>
24	Friday, May 7, 2004	May 26, 2004
25	Friday, May 21, 2004	June 9, 2004
26	Friday, June 4, 2004	June 23, 2004

PLEASE NOTE:

Rules will not be accepted after **12 o'clock noon** on the Friday filing deadline days unless prior approval has been received from the Administrative Rules Coordinator's office.

If the filing deadline falls on a legal holiday, submissions made on the following Monday will be accepted.

*****Note change of filing deadline*****

PUBLICATION PROCEDURES

TO: Administrative Rules Coordinators and Text Processors of State Agencies
FROM: Kathleen K. Bates, Iowa Administrative Code Editor
SUBJECT: Publication of Rules in Iowa Administrative Bulletin

The Administrative Code Division uses QuickSilver XML Publisher, version 1.5.3, to publish the Iowa Administrative Bulletin and can import documents directly from most other word processing systems, including Microsoft Word, Word for Windows (Word 7 or earlier), and WordPerfect.

1. To facilitate the publication of rule-making documents, we request that you send your document(s) as an attachment(s) to an E-mail message, addressed to both of the following:

bruce.carr@legis.state.ia.us and
kathleen.bates@legis.state.ia.us

2. Alternatively, you may send a PC-compatible diskette of the rule making. Please indicate on each diskette the following information: agency name, file name, format used for exporting, and chapter(s) amended. Diskettes may be delivered to the Administrative Code Division, Third Floor West, Ola Babcock Miller Building, or included with the documents submitted to the Governor's Administrative Rules Coordinator.

Please note that changes made prior to publication of the rule-making documents are reflected on the hard copy returned to agencies, but not on the diskettes; diskettes are returned unchanged.

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The Administrative Rules Review Committee will hold its regular, statutory meeting on Tuesday, May 11, 2004, at 9 a.m. in Room 116, State Capitol, Des Moines, Iowa. The following rules will be reviewed:

ADMINISTRATIVE SERVICES DEPARTMENT[11]

Sick leave and vacation incentive program—fiscal year 2005, 60.1(6), Filed Emergency **ARC 3307B** 4/28/04
 Purchasing standards for service contracts—applicability, 106.1 to 106.3, 106.5, 106.15(2), Notice **ARC 3303B** 4/28/04
 Disposal of state personal property, adopt ch 111, Notice **ARC 3315B** 4/28/04

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]

Animal exhibition requirements, 64.34(2)“a,” 64.34(4)“b,” 64.34(10), 64.35(1),
 64.35(2), 64.35(6), Filed **ARC 3278B** 4/14/04

COLLEGE STUDENT AID COMMISSION[283]

EDUCATION DEPARTMENT[281]“umbrella”

Iowa tuition grants—student eligibility; priority for grant awards, 12.1, Notice **ARC 3323B** 4/28/04

ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]

Iowa community development block grant program—application procedures,
 23.6(2)“c,” 23.6(3), 23.6(4), Filed **ARC 3285B** 4/14/04
 Loan and credit guarantee program, adopt ch 69, Filed **ARC 3284B** 4/14/04

EDUCATIONAL EXAMINERS BOARD[282]

EDUCATION DEPARTMENT[281]“umbrella”

Criteria of professional practices; criteria of competent performance;
 code of professional conduct and ethics, rescind chs 12, 13;
 adopt ch 25, Notice **ARC 3089B Terminated**, also Notice **ARC 3311B** 4/28/04
 Class E license, 14.131, Notice **ARC 3313B** 4/28/04
 Fees for practitioner licenses and authorizations, 14.121, 17.7(3), 19.5(2),
 21.2, 21.5, Filed **ARC 3310B** 4/28/04
 Code of rights and responsibilities, adopt ch 26, Amended Notice **ARC 3312B** 4/28/04

ELDER AFFAIRS DEPARTMENT[321]

Waivers; commission of elder affairs; senior living coordinating unit; petitions for rule making;
 declaratory orders, 1.2(1)“f,” 1.2(3), chs 3, 11, 16 to 18, Filed **ARC 3300B** 4/14/04
 Adult day services programs, chs 22 to ch 24, Filed **ARC 3288B** 4/14/04
 Assisted living programs, ch 25, Filed **ARC 3299B** 4/14/04
 Monitoring, civil penalties, complaints and investigation for adult day services
 and assisted living programs; fees for adult day services and assisted living programs;
 elder group homes, chs 26, 27, 29, Filed **ARC 3301B** 4/14/04
 Elder group homes, ch 29, Notice **ARC 3302B** 4/14/04

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 61.3(3) tables 1, 2, and 3a, 61.3(5), 61.3(6), Notice **ARC 3282B** 4/14/04
 Manure applicator certification—fees, terminology updated, 65.1, 65.19,
Notice **ARC 2924B Terminated** **ARC 3279B** 4/14/04
 Iowa land recycling program and response action standards, 137.2, 137.3(2)“c”(1), 137.5, 137.6(6),
 137.6(8)“c,” 137.8(3), 137.8(3)“l,” 137.8(6), 137.9(9), 137.10(7) to 137.10(9), Notice **ARC 3283B** 4/14/04

HUMAN SERVICES DEPARTMENT[441]

HCBS waivers for persons with mental retardation—day habilitation services,
 77.37(27), 78.41(14), 79.1(2), 83.61(1)“l,” 83.66, Notice **ARC 3327B** 4/28/04
 Suspension or reinstatement of support obligation—department assistance, 99.62(2), 99.83(6)“b,”
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 Provider registration—category C child development homes, 110.10(2), Notice **ARC 3329B** 4/28/04
 Licensing and regulation of child foster care facilities, 112.2, 112.3(2), 112.3(4)“a” and “b,”
 112.3(6), 112.4(3), 112.4(5), 112.4(6), 112.5(1), 112.5(1)“e,” 112.6(1), Filed **ARC 3325B** 4/28/04
 Foster care services—local transition committees, 202.1, 202.2(5), 202.6(2), 202.6(4), 202.6(5),
 202.7, 202.8(1), 202.8(2), 202.13(3), 202.15(4), 202.15(6), 202.16(1)“f,” 202.17, 202.17(1),
 202.17(1)“a” and “c” to “e,” 202.17(2), 202.18, Filed **ARC 3326B** 4/28/04

INSURANCE DIVISION[191]

COMMERCE DEPARTMENT[181]"umbrella"

- Diminished value, rescind subrule 15.43(10), Filed Emergency **ARC 3306B** 4/28/04
- Suspension of the small employer health reinsurance program, 71.25, Filed **ARC 3324B** 4/28/04

IOWA FINANCE AUTHORITY[265]

ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]"umbrella"

- Title guaranty division, 9.1 to 9.19, Notice **ARC 3322B** 4/28/04

IOWA PUBLIC EMPLOYEES' RETIREMENT SYSTEM[495]

Employers; employees; covered wages, rescind 581—21.2 to 21.7, adopt 495—chs 4 to 6,

- Notice **ARC 3295B** 4/14/04

LANDSCAPE ARCHITECTURAL EXAMINING BOARD[193D]

Professional Licensing and Regulation Division[193]

COMMERCE DEPARTMENT[181]"umbrella"

- Fee schedule, 2.10, Filed **ARC 3276B** 4/14/04

LAW ENFORCEMENT ACADEMY[501]

Reserve officer personal standards, ch 10 title, ch 10 div I, 10.1 to 10.10,

- ch 10 div II, 10.100 to 10.105, Filed **ARC 3314B** 4/28/04

MEDICAL EXAMINERS BOARD[653]

PUBLIC HEALTH DEPARTMENT[641]"umbrella"

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Pharmacist-interns—administration of influenza and pneumococcal vaccines to adults, 13.3(1)"c,"

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PAROLE BOARD[205]

CORRECTIONS DEPARTMENT[201]"umbrella"

Organization; administrative procedures; public communications and records;

victim notification; parole and work release considerations; parole and

work release supervision; parole revocation; parole discharge; executive

- clemency; appeals; waivers, chs 1 to 8, 10, 11, 13 to 16, Notice **ARC 3321B** 4/28/04

PETROLEUM UST FUND BOARD, IOWA COMPREHENSIVE[591]

Potential conflicts of interest; UST fund board authority to transfer liabilities to a third party

- (loss portfolio transfers), 1.5, adopt ch 9, Notice **ARC 3308B** 4/28/04

PROFESSIONAL LICENSURE DIVISION[645]

PUBLIC HEALTH DEPARTMENT[641]"umbrella"

Chiropractic examiners, 40.4(2), 40.4(3), 40.6(3), 40.6(4), 41.2(1)"d" to "h,"

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- Filed **ARC 3286B** 4/14/04

Nursing home administrator examiners, 140.4(2), 140.4(3), 140.6(3), 140.6(4),

- ch 144, Filed **ARC 3304B** 4/28/04

Optometry examiners, 179.4(2), 179.4(3), 179.6(3), 179.6(4), 180.2(1)"d,"

- 180.5, 180.8 to 180.10, ch 183, 184.1(5) to 184.1(9), Filed **ARC 3309B** 4/28/04

Athletic training examiners, 351.9, 351.11 to 351.14, 354.1(5), 354.1(7) to 354.1(9),

- Notice **ARC 3275B** 4/14/04

PUBLIC SAFETY DEPARTMENT[661]

Fire safety—adult day services programs,

- 5.5(2)"c" to "f," 5.500, 5.510, Filed **ARC 3293B** 4/14/04

Fire safety—assisted living facilities, 5.626, Filed **ARC 3292B** 4/14/04

Fire safety standards for residential care facilities,

- 5.950, Filed Emergency After Notice **ARC 3291B** 4/14/04

Hospitals and health care facilities—compliance with building code

- and fire safety standards, 16.130(15), Filed **ARC 3320B** 4/28/04

Fire fighter certification, ch 54 title, 54.1 to 54.4, 54.201 to 54.204, Notice **ARC 3294B** 4/14/04**REAL ESTATE COMMISSION[193E]**

Professional Licensing and Regulation Division[193]

COMMERCE DEPARTMENT[181]"umbrella"

- Trust accounts and closings, 13.1(3), 13.1(7), 13.1(11), Notice **ARC 3277B** 4/14/04

REVENUE DEPARTMENT[701]

- Department organization; definition of “livestock” to include whitetail deer and mule deer; exemption for fees charged by financial institutions to a noncustomer; exemption for transfer of vehicle subject to registration from one corporation to another; inheritance tax, 5.13(2)“bb,” 5.14(6)“ii” to “kk,” 6.1(1), 6.1(3), 8.2(2), 8.4(2), 17.9(1), 26.8(4)“p,” 34.5(9), 86.1, 86.2(2)“d,” 86.5(7)“d,” Filed **ARC 3298B** 4/14/04
- New school infrastructure local option sales and services tax—effective on or after April 1, 2003, through fiscal years ending December 31, 2022, ch 108 preamble, adopt ch 109, Filed **ARC 3297B** 4/14/04

TRANSPORTATION DEPARTMENT[761]

- School transportation services provided by regional transit systems, 911.1(2), 911.5, 911.6(1), 911.6(6), 911.8(1), Notice **ARC 3305B** 4/28/04

UTILITIES DIVISION[199]

COMMERCE DEPARTMENT[181]“umbrella”

- Capital infrastructure investments and cost of capital changes, 7.4(6)“g,” 7.11(2), Filed **ARC 3317B** 4/28/04
- Second payment agreements, 19.4(10)“c,” 20.4(11)“c,” Notice **ARC 2724B** Terminated **ARC 3318B** 4/28/04
- Temperature trigger for cold weather protections, 19.4(15)“h”(5), 19.4(15)“i,” 20.4(15)“h”(6), 20.4(15)“i,” Notice **ARC 2725B** Terminated **ARC 3316B** 4/28/04
- Small volume gas transportation service, 19.13(4)“e” and “f,” 19.14(5)“d,” Filed **ARC 3319B** 4/28/04
- Intrastate access service charges, 22.14(2)“d,” Filed **ARC 3296B** 4/14/04

WORKERS’ COMPENSATION DIVISION[876]

WORKFORCE DEVELOPMENT DEPARTMENT[871]“umbrella”

- Electronic data interchange—required reports, 11.7, Notice **ARC 3287B** 4/14/04

ADMINISTRATIVE RULES REVIEW COMMITTEE MEMBERS

Regular statutory meetings are held the second Tuesday of each month at the seat of government as provided in Iowa Code section 17A.8. A special meeting may be called by the Chair at any place in the state and at any time.

EDITOR’S NOTE: Terms ending April 30, 2007.

Senator Michael Connolly
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Des Moines, Iowa 50319

To All Agencies:

The Administrative Rules Review Committee voted to request that Agencies comply with Iowa Code section 17A.4(1)“b” by allowing the opportunity for oral presentation (hearing) to be held at least **twenty** days after publication of Notice in the Iowa Administrative Bulletin.

AGENCY	HEARING LOCATION	DATE AND TIME OF HEARING
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ADMINISTRATIVE SERVICES DEPARTMENT[11]

Disposal of state personal property, adopt ch 111 IAB 4/28/04 ARC 3315B	Conference Room 04, Level A-South Hoover State Office Bldg. Des Moines, Iowa	May 18, 2004 11 a.m.
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EDUCATIONAL EXAMINERS BOARD[282]

Code of professional conduct and ethics, rescind chs 12, 13; adopt ch 25 IAB 4/28/04 ARC 3311B	Room 3 North, Third Floor Grimes State Office Bldg. Des Moines, Iowa	May 18, 2004 3 p.m.
Class E license, 14.131 IAB 4/28/04 ARC 3313B	Room 3 North, Third Floor Grimes State Office Bldg. Des Moines, Iowa	May 18, 2004 1 p.m.

EDUCATION DEPARTMENT[281]

Vocational rehabilitation services division, 5.3(1), 5.16, ch 56 IAB 3/31/04 ARC 3264B (ICN Network)	Second Floor Grimes State Office Bldg. Des Moines, Iowa	April 29, 2004 3 p.m.
	West High School 425 E. Ridgeway Ave. Waterloo, Iowa	April 29, 2004 3 p.m.
	Revere Room, Grant Wood AEA 4401 Sixth St. SW Cedar Rapids, Iowa	April 29, 2004 3 p.m.
	Louisa Room, Mississippi Bend AEA 729 21st St. Bettendorf, Iowa	April 29, 2004 3 p.m.
	Room 209A, Western Hills AEA 1520 Morningside Ave. Sioux City, Iowa	April 29, 2004 3 p.m.
	Loess Hills AEA 24997 Hwy 92 Council Bluffs, Iowa	April 29, 2004 3 p.m.
	Room 2, Keystone AEA 2310 Chaney Rd. Dubuque, Iowa	April 29, 2004 3 p.m.

ELDER AFFAIRS DEPARTMENT[321]

Elder group homes, ch 29 IAB 4/14/04 ARC 3302B (ICN Network)	Public Library 300 S. Fillmore St. Osceola, Iowa	May 5, 2004 9 a.m.
	Room 105 Clinton Community College - 1 1000 Lincoln Blvd. Clinton, Iowa	May 5, 2004 9 a.m.
	Sixth Floor NW Lucas State Office Bldg. Des Moines, Iowa	May 5, 2004 9 a.m.
	Room 3 West -19C Veterans Administration Medical Ctr. 601 Highway 6 Iowa City, Iowa	May 5, 2004 9 a.m.
	NIACC 500 College Dr. Mason City	May 5, 2004 9 a.m.
	AEA 4, North entrance 1382 Fourth Ave. NE Sioux Center, Iowa	May 5, 2004 9 a.m.

ENVIRONMENTAL PROTECTION COMMISSION[567]

Terms used in determination of PSD permit review, 20.2, 22.4(1), 22.5(1), 22.100, 22.120 IAB 4/14/04 ARC 3280B (See also ARC 3155B , IAB 2/4/04)	Rooms A and B Iowa Bldg. Kirkwood Community College 6301 Kirkwood Blvd. SW Cedar Rapids, Iowa	June 2, 2004 1 to 3 p.m.
Surface water quality criteria, 61.3 IAB 4/14/04 ARC 3282B	City Hall Meeting Room 400 Claiborne Dr. Decorah, Iowa	May 4, 2004 7 p.m.
	Opera House 207 N. Main St. Elkader, Iowa	May 5, 2004 7 p.m.
	Meeting Room A Public Library 123 S. Linn St. (temporary entrance in pedestrian mall) Iowa City, Iowa	May 11, 2004 1 p.m.
	Fifth Floor Conference Rooms Wallace State Office Bldg. Des Moines, Iowa	May 14, 2004 1 p.m.
Iowa land recycling program and response action standards, amendments to ch 137 IAB 4/14/04 ARC 3283B	Conference Room 5W Wallace State Office Bldg. Des Moines, Iowa	May 5, 2004 1:30 p.m.

IOWA PUBLIC EMPLOYEES' RETIREMENT SYSTEM[495]

Employers; employees; covered wages, adopt 495—chs 4 to 6; rescind 581—21.2 to 21.7 IAB 4/14/04 ARC 3295B	7401 Register Dr. Des Moines, Iowa	May 4, 2004 9 a.m.
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MEDICAL EXAMINERS BOARD[653]

Fees, 8.2, 8.4(6), 8.7, 8.12, 8.13, 12.25(1) IAB 4/14/04 ARC 3290B	Suite C 400 SW Eighth St. Des Moines, Iowa	May 4, 2004 2 p.m.
Written protocol for pharmacist's delegation of administration of vaccines, 13.3(1) IAB 4/14/04 ARC 3289B	Suite C 400 SW Eighth St. Des Moines, Iowa	May 4, 2004 1 p.m.

PAROLE BOARD[205]

General, chs 1 to 16 IAB 4/28/04 ARC 3321B	Holmes Murphy Bldg. 420 Watson Powell Jr. Way Des Moines, Iowa	May 18, 2004 10 a.m.
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PROFESSIONAL LICENSURE DIVISION[645]

Athletic training examiners, 351.9, 351.11 to 351.14, 354.1 IAB 4/14/04 ARC 3275B	Fifth Floor Board Conference Room Lucas State Office Bldg. Des Moines, Iowa	May 4, 2004 9 to 10 a.m.
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PUBLIC SAFETY DEPARTMENT[661]

Fire fighter certification, 54.1 to 54.204 IAB 4/14/04 ARC 3294B	Fire Service Training Bureau 3100 Fire Service Rd. Ames, Iowa	June 3, 2004 9:30 a.m.
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REAL ESTATE COMMISSION[193E]

Trust accounts and closings, 13.1 IAB 4/14/04 ARC 3277B	Second Floor Conference Room 1920 SE Hulsizer Ankeny, Iowa	May 4, 2004 10 a.m.
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TRANSPORTATION DEPARTMENT[761]

School transportation services provided by regional transit systems, amendments to ch 911 IAB 4/28/04 ARC 3305B	Modal Division Conference Room 800 Lincoln Way Ames, Iowa	May 20, 2004 10 a.m. (If requested)
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Due to reorganization of state government by 1986 Iowa Acts, chapter 1245, it was necessary to revise the agency identification numbering system, i.e., the bracketed number following the agency name.

“Umbrella” agencies and elected officials are set out below at the left-hand margin in CAPITAL letters.

Divisions (boards, commissions, etc.) are indented and set out in lowercase type under their statutory “umbrellas.”

Other autonomous agencies which were not included in the original reorganization legislation as “umbrella” agencies are included alphabetically in small capitals at the left-hand margin, e.g., BEEF INDUSTRY COUNCIL, IOWA[101].

The following list will be updated as changes occur:

ADMINISTRATIVE SERVICES DEPARTMENT[11]
 AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]
 Agricultural Development Authority[25]
 Soil Conservation Division[27]
 ATTORNEY GENERAL[61]
 AUDITOR OF STATE[81]
 BEEF INDUSTRY COUNCIL, IOWA[101]
 BLIND, DEPARTMENT FOR THE[111]
 CAPITAL INVESTMENT BOARD, IOWA[123]
 CITIZENS’ AIDE[141]
 CIVIL RIGHTS COMMISSION[161]
 COMMERCE DEPARTMENT[181]
 Alcoholic Beverages Division[185]
 Banking Division[187]
 Credit Union Division[189]
 Insurance Division[191]
 Professional Licensing and Regulation Division[193]
 Accountancy Examining Board[193A]
 Architectural Examining Board[193B]
 Engineering and Land Surveying Examining Board[193C]
 Landscape Architectural Examining Board[193D]
 Real Estate Commission[193E]
 Real Estate Appraiser Examining Board[193F]
 Savings and Loan Division[197]
 Utilities Division[199]
 CORRECTIONS DEPARTMENT[201]
 Parole Board[205]
 CULTURAL AFFAIRS DEPARTMENT[221]
 Arts Division[222]
 Historical Division[223]
 ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]
 City Development Board[263]
 Grow Iowa Values Board[264]
 Iowa Finance Authority[265]
 EDUCATION DEPARTMENT[281]
 Educational Examiners Board[282]
 College Student Aid Commission[283]
 Higher Education Loan Authority[284]
 Iowa Advance Funding Authority[285]
 Libraries and Information Services Division[286]
 Public Broadcasting Division[288]
 School Budget Review Committee[289]
 EGG COUNCIL, IOWA[301]
 ELDER AFFAIRS DEPARTMENT[321]
 EMPOWERMENT BOARD, IOWA[349]
 ETHICS AND CAMPAIGN DISCLOSURE BOARD, IOWA[351]
 EXECUTIVE COUNCIL[361]
 FAIR BOARD[371]
 GENERAL SERVICES DEPARTMENT[401]
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 Community Action Agencies Division[427]
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 Deaf Services Division[429]
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 Status of African-Americans, Division on the[434]
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HUMAN SERVICES DEPARTMENT[441]
INFORMATION TECHNOLOGY DEPARTMENT[471]
INSPECTIONS AND APPEALS DEPARTMENT[481]
 Employment Appeal Board[486]
 Foster Care Review Board[489]
 Racing and Gaming Commission[491]
 State Public Defender[493]
IOWA PUBLIC EMPLOYEES' RETIREMENT SYSTEM[495]
LAW ENFORCEMENT ACADEMY[501]
LIVESTOCK HEALTH ADVISORY COUNCIL[521]
LOTTERY AUTHORITY, IOWA[531]
MANAGEMENT DEPARTMENT[541]
 Appeal Board, State[543]
 City Finance Committee[545]
 County Finance Committee[547]
NARCOTICS ENFORCEMENT ADVISORY COUNCIL[551]
VOLUNTEER SERVICE, IOWA COMMISSION ON[555]
NATURAL RESOURCES DEPARTMENT[561]
 Energy and Geological Resources Division[565]
 Environmental Protection Commission[567]
 Natural Resource Commission[571]
 Preserves, State Advisory Board for[575]
PERSONNEL DEPARTMENT[581]
PETROLEUM UNDERGROUND STORAGE TANK FUND
 BOARD, IOWA COMPREHENSIVE[591]
PREVENTION OF DISABILITIES POLICY COUNCIL[597]
PUBLIC DEFENSE DEPARTMENT[601]
 Homeland Security and Emergency Management Division[605]
 Military Division[611]
PUBLIC EMPLOYMENT RELATIONS BOARD[621]
PUBLIC HEALTH DEPARTMENT[641]
 Substance Abuse Commission[643]
 Professional Licensure Division[645]
 Dental Examiners Board[650]
 Medical Examiners Board[653]
 Nursing Board[655]
 Pharmacy Examiners Board[657]
PUBLIC SAFETY DEPARTMENT[661]
RECORDS COMMISSION[671]
REGENTS BOARD[681]
 Archaeologist[685]
REVENUE DEPARTMENT[701]
SECRETARY OF STATE[721]
SEED CAPITAL CORPORATION, IOWA[727]
SHEEP AND WOOL PROMOTION BOARD, IOWA[741]
TELECOMMUNICATIONS AND TECHNOLOGY COMMISSION, IOWA[751]
TRANSPORTATION DEPARTMENT[761]
 Railway Finance Authority[765]
TREASURER OF STATE[781]
TURKEY MARKETING COUNCIL, IOWA[787]
UNIFORM STATE LAWS COMMISSION[791]
VETERANS AFFAIRS COMMISSION[801]
VETERINARY MEDICINE BOARD[811]
VOTER REGISTRATION COMMISSION[821]
WORKFORCE DEVELOPMENT DEPARTMENT[871]
 Labor Services Division[875]
 Workers' Compensation Division[876]
 Workforce Development Board and
 Workforce Development Center Administration Division[877]

ARC 3303B

ADMINISTRATIVE SERVICES
DEPARTMENT[11]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code Supplement section 8A.104, the Department of Administrative Services proposes to amend Chapter 106, “Purchasing Standards for Service Contracts,” Iowa Administrative Code.

The purpose of this proposed rule making is to revise the applicability of this chapter by deleting the definition of “department and establishment” and adding a new definition of “state agency” based on Iowa Code Supplement chapter 8A, which created the Department of Administrative Services effective July 1, 2003. The definition of “state agency,” an entity subject to these rules, in the Department of General Services’ former authorizing legislation was similar to the definition of “department and/or establishment” that is used by the Accountable Government Act. The Accountable Government Act was the basis for the companion chapter, Chapter 107, “Uniform Terms and Conditions for Service Contracts,” written at the same time as this chapter. Therefore, the same applicability definition was used for both chapters. The new definition of “state agency” in Iowa Code Supplement section 8A.101 specifically exempts from Department rules elected officials, the legislative and judicial branches, and political subdivisions of the state. Also included in this rule making is a reference to other rules relating to the purchase of services.

Public comments concerning the proposed amendments will be accepted until 4:30 p.m. on May 18, 2004. Interested persons may submit written, oral or electronic comments by contacting Carol Stratemeyer, Department of Administrative Services, Hoover State Office Building, Level A, Des Moines, Iowa 50319-0104; telephone (515)281-6134; fax (515)281-6140; E-mail Carol.Stratemeyer@iowa.gov.

These amendments are intended to implement Iowa Code Supplement sections 8A.101 and 8A.302.

The following amendments are proposed.

ITEM 1. Amend **11—Chapter 106** by replacing all parenthetical references to “80GA,HF534” with references to “8A.”

ITEM 2. Except as otherwise noted below, amend **11—Chapter 106** by replacing all references to “department or establishment” and “department and establishment” with references to “state agency,” by replacing all references to “departments or establishments” and “departments and establishments” with references to “state agencies,” and by replacing all references to “department’s or establishment’s” with references to “state agency’s.”

ITEM 3. Amend rule 11—106.1(8A), introductory paragraph, as follows:

11—106.1(8A) Authority and scope. This chapter is adopted for the purpose of establishing a system of uniform standards for purchasing services in state government. The department of administrative services has adopted these uni-

form standards in cooperation with other state agencies as provided for in 2003 Iowa Acts, House File 534, section 29.

ITEM 4. Amend rule 11—106.2(8A) as follows:

11—106.2(8A) Applicability. This chapter shall apply to all ~~departments and establishments~~ *state agencies* purchasing services unless otherwise provided by law.

106.2(1) *When a state agency that is also a “participating agency” as defined by 471—subrule 13.2(3) intends to procure “information technology services” as defined by 471—subrule 13.2(3), the provisions of 471—13.3(14B) shall also apply to procurement of the services.*

106.2(2) *When a state agency that is subject to the applicability requirements of rule 11—105.1(80GA,HF534) intends to procure “services of general use” as defined by rule 11—105.2(80GA,HF534), the provisions of 11—Chapter 105 shall apply to the procurement.*

ITEM 5. Amend rule **11—106.3(8A)** as follows:

Amend the following definition:

“Intergovernmental agreement” means an agreement for services between a ~~department or establishment~~ *state agency* and any other governmental entity, ~~department or establishment~~ whether federal, state, or local and any department, division, unit or subdivision thereof.

Rescind the following definition:

“~~Department and establishment~~” and “~~department~~” or “~~establishment~~” means any executive department, commission, board, institution, bureau, office, or other agency of the state government, except the courts, by whatever name called, ~~other than the legislature, that uses, expends or receives any state funds.~~

Insert the following **new** definition in alphabetical order:

“Agency” or “state agency” means a unit of state government, which is an authority, board, commission, committee, council, department, examining board, or independent agency as defined in Iowa Code section 7E.4, including but not limited to each principal central department enumerated in Iowa Code Supplement section 7E.5. However, “agency” or “state agency” does not mean any of the following:

1. The office of the governor or the office of an elective constitutional or statutory officer.
2. The general assembly, or any office or unit under its administrative authority.
3. The judicial branch, as provided in Iowa Code section 602.1102.
4. A political subdivision of the state or its offices or units, including but not limited to a county, city, or community college.

ITEM 6. Amend rule 11—106.5(8A) as follows:

11—106.5(8A) Use of competitive selection. ~~Departments and establishments~~ *State agencies* shall use competitive selection to acquire services from private ~~agencies~~ *entities* when the estimated annual value of the service contract is equal to or greater than \$5,000 or when the estimated value of the multiyear service contract in the aggregate, including any renewals, is equal to or greater than \$15,000 unless there is adequate justification for a sole source or emergency procurement pursuant to rule 106.7(8A) or 106.8(8A) or another provision of law.

ITEM 7. Amend subrule 106.15(2) as follows:

106.15(2) Nothing in this chapter is intended to supplant or supersede the requirements adopted by the department of administrative services relating to the processing of claims. ~~Departments or establishments~~ *State agencies* entering into

ADMINISTRATIVE SERVICES DEPARTMENT[11](cont'd)

personal services contracts should refer to procedure 240.102, *Miscellaneous—Services Contracting*, of the department of administrative services, state accounting enterprise policy and procedure manual.

ITEM 8. Amend **11—Chapter 106**, implementation clause, as follows:

These rules are intended to implement 2003 Iowa Acts, House File 534, *Code Supplement* sections 4 and 29 8A.101, 8A.104, 8A.301, 8A.302, and 8A.311.

ARC 3315B**ADMINISTRATIVE SERVICES
DEPARTMENT[11]****Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code Supplement section 8A.104, the Department of Administrative Services gives Notice of Intended Action to adopt a new Chapter 111, “Disposal of State Personal Property,” Iowa Administrative Code.

This new chapter establishes procedures for inspecting, selecting, and removing personal property from state agencies or from state storage as well as procedures for the auction of vehicles and other items under the control of the Director.

Public comments concerning the proposed rules will be accepted until 4:30 p.m. on May 18, 2004. Interested persons may submit written, oral or electronic comments by contacting Carol Stratemeyer, Department of Administrative Services, Hoover State Office Building, Level A, Des Moines, Iowa 50319-0104; telephone (515)281-6134; fax (515)281-6140; E-mail Carol.Stratemeyer@iowa.gov.

There will be a public hearing on May 18, 2004, at 11 a.m. in the Administrative Services Conference Room 04, Hoover State Office Building, Level A-South, at which time interested parties may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the rules. Persons with special needs may contact the Department of Administrative Services prior to the hearing if accommodations are needed.

These rules are intended to implement Iowa Code Supplement sections 8A.321(5), 8A.324, 8A.362(6), and 8A.365.

The following rules are proposed.

Adopt the following **new** chapter:

CHAPTER 111**DISPOSAL OF STATE PERSONAL PROPERTY****11—111.1(8A) Definitions.**

“Agency” or “state agency” means a unit of state government, which is an authority, board, commission, committee, council, department, examining board, or independent agency as defined in Iowa Code section 7E.4, including but not limited to each principal central department enumerated

in Iowa Code Supplement section 7E.5. However, “agency” or “state agency” does not mean any of the following:

1. The office of the governor or the office of an elective constitutional or statutory officer.

2. The general assembly or any office or unit under its administrative authority.

3. The judicial branch, as provided in Iowa Code section 602.1102.

4. A political subdivision of the state or its offices or units, including but not limited to a county, city, or community college.

“Auction” means a sale of property to the highest bidder. Auctions may be conducted electronically.

“Bid” means to offer a price to purchase an item.

“Bidder” means an individual who offers a price to purchase an item.

“Department” means the Iowa department of administrative services.

“Director” means the director of the Iowa department of administrative services or the director’s designee.

“Hazardous waste” means personal property that requires special handling and a special disposal fee based on state or federal regulations.

“Highest bidder” means an individual who offers the highest price to purchase an item.

“Personal property” means anything of value belonging to the state, other than real property, under the control of the director.

“Scrap” means equipment and supplies that are to be disposed of because they do not have sufficient value to justify preparing them for reuse or reprocessing.

“State surplus” means items of personal property that have value and are not scrap, such as equipment and supplies for which state agencies no longer have a business use.

“State surplus program” means the program authorized under Iowa Code Supplement chapter 8A for the director to dispose of unused state property.

“State vehicle” means any vehicle registered to the state of Iowa, department of administrative services.

“Successful bidder” means an individual who was awarded the sale of an item as the highest bidder.

“Surplus property staging area” means an area within each building on the capitol complex where surplus property, other than vehicles, is accumulated for pickup.

11—111.2(8A) Disposal of state surplus property. The director is responsible for inspecting, selecting and removing surplus personal property from state agencies or from state storage. The director shall dispose of all personal property of the state under the director’s control when it becomes unnecessary or unfit for further use by the state.

111.2(1) Means of disposal. The director may dispose of unfit or unnecessary personal property by auction or other method of sale, trade-in, salvage, or recycling or may properly and safely dispose of it by other means. Proceeds from the sale of personal property, except for vehicles and printing equipment or as otherwise provided by statute, shall be deposited in the general fund of the state.

111.2(2) Transfer. Personal property may be transferred between state agencies in lieu of other means of disposal.

111.2(3) Disposal agreement. If the director concludes that the personal property has little or no value, the director may enter into an agreement with a not-for-profit organization or governmental agency to dispose of the personal property. The department has an agreement with Iowa Prison Industries (IPI) to dispose of state surplus property.

ADMINISTRATIVE SERVICES DEPARTMENT[11](cont'd)

111.2(4) Identifying items for disposal. State agencies or department staff may identify unused property within state office areas. Department staff shall determine whether the unused property is scrap or salvageable surplus property and assist the agency in the completion of the surplus disposal documents.

111.2(5) Request to remove surplus property. Requests from agencies to remove surplus property are processed through the department.

111.2(6) Removal of surplus property. State agencies or designated department staff may remove surplus property from a building's office area on the capitol complex to the building's surplus property staging area.

111.2(7) IPI may charge the state agency in control of the surplus property with the cost of removing and transporting the property from outside the Des Moines area.

111.2(8) Title to the surplus property shall transfer to IPI when the property and the declaration form for the state surplus property are in the possession of IPI. When IPI adds value to the property transferred to it and sells the property, the proceeds from the sale shall be deposited with IPI and not in the general fund of the state.

111.2(9) Disposal of hazardous waste. When the director determines that personal property is contaminated, contains hazardous waste, or is hazardous waste, the state agency providing the property for disposal is responsible for the hazardous waste disposal fees.

111.2(10) The director may dispose of presses, printing equipment, printing supplies, and other machinery or equipment used in the printing operation pursuant to Iowa Code Supplement section 8A.341. The receipts from the sale of presses, printing equipment, printing supplies, and other machinery or equipment used in the printing operation shall be deposited in the printing revolving fund established in Iowa Code Supplement section 8A.345.

11—111.3(8A) Auction standards. Public auctions of state personal property under the control of the director shall be held in accordance with the standards set forth in this rule. Auctions may be conducted electronically.

111.3(1) Eligibility to bid. All bidders must register before making a bid. Bid numbers shall be available prior to and during the sale. All bidders must be 18 years of age or older to bid or purchase items at the auction.

111.3(2) Settlement of purchases. All sales are final. Final settlement may be made on the date of the sale, but must be completed by the date specified at the time of the sale. Removal of purchased items is at the expense of the successful bidder.

111.3(3) Guarantees and warranties. All items are sold to the highest bidder as is, with no guarantees or warranties.

111.3(4) Sales tax. Iowa sales tax and any applicable local option tax shall be collected at the auction, unless the item sold is a vehicle subject to registration.

111.3(5) Public property. Individuals tampering with or pilfering public property shall be subject to prosecution.

111.3(6) Office hours. Office hours for completing final settlement in person and taking possession of the purchased item are as specified in the terms and conditions of the sale.

111.3(7) Announcements. Any announcements, corrections or revisions of sale item descriptions or bid reservation policy announced by auction officials during the course of the sale shall take precedence over descriptions or bid reservations in printed materials.

111.3(8) Liability. The state does not accept any responsibility or liability for damages done to person or property once the successful bidder takes possession of the purchased item.

If the item is damaged while still in the possession of the state, upon the request of the successful bidder the state shall return the bidder's payment and void the transaction. The state of Iowa, department of administrative services, the auctioneers, and their employees are not responsible for any accidents.

11—111.4(8A) State vehicle auctions.

111.4(1) Public auction—exceptions. All used motor vehicles turned in to the director shall be disposed of by public auction, with the following exceptions:

a. In the case of a used motor vehicle of special design, the director may, instead of selling the vehicle at public auction, authorize the trade of the vehicle for another vehicle of similar design.

b. If a motor vehicle sustains damage and the cost of repair exceeds the wholesale value of the vehicle, the director may dispose of the vehicle by obtaining two or more written salvage bids and selling the vehicle to the highest responsible bidder.

111.4(2) Advertisement of sales. A public auction of state vehicles under the control of the director shall be advertised in a newspaper of general circulation as defined in Iowa Code section 618.3, subsection 1, in the area of the sale one week in advance of the sale. Public auctions will also be advertised on the department's Web site.

111.4(3) Dates and times to examine vehicles. Prospective buyers may examine a vehicle, start the engine and operate accessories on an auction vehicle during times and dates specified in the terms and conditions of the sale, but are prohibited from over-revving the engine. Only those individuals aged 18 or older in possession of a valid operator's, chauffeur's, or commercial driver's license will be permitted to start engines and operate accessories of the auction vehicles. Under no condition will an individual other than personnel authorized by the department move a vehicle from its sale position.

111.4(4) Bid deposit. A successful bidder must make a \$200 deposit to hold an item for final payment. The deposit must be in the form of cash, traveler's check, postal money order, cashier's check, or a certified check from a savings and loan, credit union, or bank for each vehicle or other item purchased, made payable or endorsable to the state of Iowa. Political subdivisions are the exception to this rule and may use either a requisition or purchase order in lieu of the deposit.

111.4(5) Personal checks. No personal or company checks will be accepted for any \$200 deposit or final settlement for the purchase of a vehicle, unless accompanied by a letter from the issuing financial institution guaranteeing the amount of the check.

111.4(6) Bid default. Bidders are cautioned to bid only on those items the bidder is prepared to pay for and remove in accordance with the terms and conditions of the sale. All items awarded the highest bidder contractually belong to the highest bidder and must be paid for and removed within the time period allowed by the terms and conditions of the sale. The successful bidder agrees that, in the event the property is not paid for or removed within the prescribed period of time, the state of Iowa, at its election and upon notice of default, shall be entitled to retain or collect as liquidated damages a sum equal to the greater of either 20 percent of the total purchase price of the item on which the default has occurred or \$200 if the successful purchase price is less than \$1,000.

111.4(7) Settlement of vehicle purchases. Deposits may be forfeited if the balance due is not paid by the date specified at the time of the sale. A penalty of \$25 per workday per item

ADMINISTRATIVE SERVICES DEPARTMENT[11](cont'd)

will be assessed beginning at the close of business on the date specified at the time of the sale for any final settlement still owed to the state of Iowa. Payments must be received timely and in the terms specified in subrule 111.3(2). In the event that a final settlement is not concluded by the date specified at the time of the sale, deposits held against items sold will be forfeited to the state of Iowa.

111.4(8) Vehicle storage. Vehicles purchased at state auction may be stored on state of Iowa premises at no charge until the close of business on the date specified in the terms and conditions of the sale. Vehicles remaining after that time and date will be assessed a \$25 per calendar day storage fee, which must be paid in full prior to release of vehicles and title documents.

111.4(9) Title transfer. Title transfer is made at the time of final settlement. Use tax for vehicles subject to registration will be paid by the successful bidder to the county treasurer at the time of application for a vehicle license. The director shall furnish an in-transit paper license plate to the successful bidder. Requests for duplicate titles will be processed for a fee of \$25 per title.

111.4(10) Window notations. Any mechanical defects or disrepair conditions that are determined by the director, or of which the director is made aware, are noted on the windshield of each vehicle. Obvious damage such as, but not limited to, body dents or rust perforation, tire wear, cracked windshields, or exhaust system deterioration may or may not be noted. Accident damage will be noted on the windshield if any single accident caused repairs in excess of \$1,500 while the vehicle was owned and operated by the state of Iowa.

111.4(11) Proceeds from the sale of state vehicles sold by the director shall be deposited in the depreciation fund to the credit of the state agency that purchased the vehicle.

These rules are intended to implement Iowa Code Supplement sections 8A.321(5), 8A.324, 8A.362(6), and 8A.365.

ARC 3323B**COLLEGE STUDENT AID
COMMISSION[283]****Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 261.3, the College Student Aid Commission proposes to amend Chapter 12, “Iowa Tuition Grant Program,” Iowa Administrative Code.

The proposed amendment specifies that, for a student to be eligible to receive an Iowa Tuition Grant, at least 50 percent of the hours in which the student is enrolled must be taken in a classroom setting. The amendment also further clarifies the priority by which awards will be made.

Interested persons may submit comments orally or in writing by 4:30 p.m. on May 18, 2004, to the Executive Director, College Student Aid Commission, 200 Tenth Street, Fourth Floor, Des Moines, Iowa 50309; telephone (515)242-3344.

This amendment is intended to implement Iowa Code section 17A.3(1)“a” and “b” and chapter 261.

The following amendment is proposed.

Amend rule 283—12.1(261) as follows:

283—12.1(261) Tuition grant based on financial need to Iowa residents enrolled at eligible private institutions of postsecondary education in Iowa.

12.1(1) and 12.1(2) No change.

12.1(3) Student eligibility. A recipient must be an Iowa resident enrolled for at least three semester hours, or the trimester or quarter equivalent, in a program leading to a degree from an eligible Iowa college or university. The criteria used by the state board of regents to determine residency for tuition purposes, 681—1.4(262), are adopted for this program.

At least 50 percent of the hours in which the student is enrolled must be taken in a classroom setting.

Iowa tuition grants are provided during the traditional nine-month academic year generally defined as September through May. Students may receive no more than 8 semesters of full-time Iowa tuition grants or 16 part-time semesters.

A recipient may receive this grant for summer enrollment if the recipient is enrolled in a commission-approved accelerated program that integrates summer attendance. The purpose of restricting summer Iowa tuition grants is to ensure that students who take classes during the summer do not exhaust Iowa tuition grant eligibility prior to completing four-year degree programs.

12.1(4) Priority for grants. Applicants are ranked in order of the estimated amount which the family reasonably can be expected to contribute toward college expenses, and awards are granted to those who demonstrate need in order of family contribution, from lowest to highest, insofar as funds permit.

Fall recipients will be awarded for subsequent terms in which they are eligible before any students who enroll after the fall term. College and university officials will be notified if students who enroll in subsequent terms will be authorized to receive awards.

12.1(5) to 12.1(7) No change.

ARC 3311B**EDUCATIONAL EXAMINERS
BOARD[282]****Notice of Termination
and****Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 272.2, the Board of Educational Examiners hereby gives Notice of Intended Action to rescind Chapter 12, “Criteria of Professional Practices,” and Chapter 13, “Criteria of Competent Performance,” and to adopt new Chapter 25, “Code of Professional Conduct and Ethics,” Iowa Administrative Code.

Notice of Intended Action was originally published in the Iowa Administrative Bulletin on January 7, 2004, as **ARC 3089B**. The Board of Educational Examiners finds that further changes in the standards for ethical and professional conduct of all licensed practitioners are needed to make the chapter effective. Therefore, the Board of Educational Examiners is terminating rule making on that Notice of In-

EDUCATIONAL EXAMINERS BOARD[282](cont'd)

tended Action, **ARC 3089B**, and proposing this new Notice of Intended Action, which includes changes in standards for ethical and professional conduct of all licensed practitioners.

Chapter 25 is intended to replace Chapters 12 and 13 of the Board's current rules, which were established in 1989 when the Board was recreated. The rules establish standards for ethical and professional conduct of all licensed practitioners. The Board has been engaged in statewide discussions of this topic and has undertaken an extensive national review of each state's ethics and professional practices rules in an effort to modify and clarify its standards for ethical practice. The proposed new chapter includes definitions and language that more clearly convey to the profession the type of misconduct that is not acceptable to the Board.

A waiver provision is not included. The Board has adopted a uniform waiver rule.

Any interested party or persons may present their views either orally or in writing at the public hearing that will be held Tuesday, May 18, 2004, at 3 p.m. in Room 3 North, Third Floor, Grimes State Office Building, East 14th Street and Grand Avenue, Des Moines, Iowa 50319.

At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the proposed amendments. Persons who wish to make oral presentations at the public hearing may contact the Executive Director, Board of Educational Examiners, Grimes State Office Building, East 14th Street and Grand Avenue, Des Moines, Iowa 50319-0147, or at (515)281-5849, prior to the date of the public hearing.

Any person who intends to attend the public hearing and requires special accommodations for specific needs, such as a sign language interpreter, should contact the office of the Executive Director at (515)281-5849.

Any interested person may make written comments or suggestions on the proposed amendments before 4 p.m. on Friday, May 21, 2004. Written comments and suggestions should be addressed to Dr. Anne E. Kruse, Executive Director, Board of Educational Examiners, at the above address, or sent by E-mail to anne.kruse@ed.state.ia.us, or by fax to (515)281-7669.

These amendments are intended to implement Iowa Code section 272.2(1)"a."

The following amendments are proposed.

ITEM 1. Rescind and reserve **282—Chapters 12 and 13**.

ITEM 2. Adopt the following **new** chapter:

CHAPTER 25

CODE OF PROFESSIONAL CONDUCT AND ETHICS

282—25.1(272) Scope of standards. This code of professional conduct and ethics constitutes mandatory minimum standards of practice for all licensed practitioners as defined in Iowa Code chapter 272. The adherence to certain professional and ethical standards is essential to maintaining the integrity of the education profession.

282—25.2(272) Definitions. Except where otherwise specifically defined by law:

"Administrative and supervisory personnel" means any licensed employee such as superintendent, associate superintendent, assistant superintendent, principal, associate principal, assistant principal, or other person who does not have as a primary duty the instruction of pupils in the schools.

"Board" means the Iowa board of educational examiners.

"Discipline" means the process of sanctioning a license, certificate or authorization issued by the board.

"Ethics" means a set of principles governing the conduct of all persons governed by these rules.

"Fraud" means knowingly providing false information or representations on an application for licensure or employment, or knowingly providing false information or representations made in connection with the discharge of duties.

"License" means any license, certificate, or authorization granted by the board.

"Licensee" means any person holding a license, certificate, or authorization granted by the board.

"Practitioner" means an administrator, teacher, or other school personnel, who provides educational assistance to students and who holds a license, certificate, or other authorization issued by the board.

"Responsibility" means a duty for which one is accountable by virtue of licensure.

"Right" means a power, privilege, or immunity secured to a person by law.

"Student" means a person, regardless of age, enrolled in a course of study at a prekindergarten through grade 12 school, who is receiving direct or indirect assistance from a person licensed by the board.

"Teacher" means any person engaged in the instructional program of prekindergarten through grade 12 children, including those engaged in teaching, administration, and supervision, and who are required by law to be licensed for the position held.

282—25.3(272) Standards of professional conduct and ethics. Licensees are required to abide by all federal, state, and local laws applicable to the fulfillment of professional obligations. Violation of federal, state, or local laws in the fulfillment of professional obligations constitutes unprofessional and unethical conduct which can result in disciplinary action by the board. In addition, it is hereby deemed unprofessional and unethical for any licensee to violate any of the following standards of professional conduct and ethics:

25.3(1) Standard I—conviction of crimes, sexual or other immoral conduct with or toward a student, and child and dependent adult abuse. Violation of this standard includes:

a. Fraud. Fraud in the procurement or renewal of a practitioner's license.

b. Criminal convictions. The commission or conviction of a criminal offense as defined by Iowa law or the laws of any other state or of the United States, provided that the offense is relevant to or affects teaching or administrative performance.

(1) Disqualifying criminal convictions. The board shall deny an application for licensure and shall revoke a previously issued license if the applicant or licensee has been convicted of, has pled guilty to, or has been found guilty of the following criminal offenses, regardless of whether the judgment of conviction or sentence was deferred:

1. Any of the following forcible felonies included in Iowa Code section 702.11: child endangerment, assault, murder, sexual abuse, or kidnapping;

2. Any of the following criminal sexual offenses, as provided in Iowa Code chapter 709, involving a child:

- First-, second- or third-degree sexual abuse committed on or with a person who is under the age of 18;
- Lascivious acts with a child;
- Detention in a brothel;
- Assault with intent to commit sexual abuse;
- Indecent contact with a child;
- Sexual exploitation by a counselor;
- Lascivious conduct with a minor; or

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- Sexual exploitation by a school employee;
 - 3. Incest involving a child as prohibited by Iowa Code section 726.2;
 - 4. Dissemination and exhibition of obscene material to minors as prohibited by Iowa Code section 728.2; or
 - 5. Telephone dissemination of obscene material to minors as prohibited by Iowa Code section 728.15.
- (2) Other criminal convictions and founded child abuse. In determining whether a person should be denied a license or whether a licensee should be disciplined based upon any other criminal conviction or a founded report of physical or sexual abuse of a child, the board shall consider:
1. The nature and seriousness of the crime or founded abuse in relation to the position sought;
 2. The time elapsed since the crime or founded abuse was committed;
 3. The degree of rehabilitation which has taken place since the crime or founded abuse was committed;
 4. The likelihood that the person will commit the same crime or abuse again;
 5. The number of criminal convictions or founded abuses committed; and
 6. Such additional factors as may in a particular case demonstrate mitigating circumstances or heightened risk to public safety.
- c. Sexual involvement or indecent contact with a student. Sexual involvement includes, but is not limited to, the following acts, whether consensual or nonconsensual: fondling or touching the inner thigh, groin, buttocks, anus or breasts of a student; permitting or causing to fondle or touch the practitioner's inner thigh, groin, buttocks, anus, or breasts; or the commission of any sex act as defined in Iowa Code section 702.17.
- d. Sexual exploitation of a minor. The commission of or any conviction for an offense prohibited by Iowa Code section 728.12, Iowa Code chapter 709 or 18 U.S.C. Section 2252A(a)(5)(B).
- e. Student abuse. Licensees shall maintain professional relationships with all students, both inside and outside the classroom. The following acts or behavior constitutes unethical conduct without regard to the existence of a criminal charge or conviction:
- (1) Committing any act of physical abuse of a student;
 - (2) Committing any act of dependent adult abuse on a dependent adult student;
 - (3) Committing or soliciting any sexual or otherwise indecent act with a student or any minor;
 - (4) Soliciting, encouraging, or consummating a romantic or otherwise inappropriate relationship with a student;
 - (5) Furnishing alcohol or illegal or unauthorized drugs or drug paraphernalia to any student or knowingly allowing a student to consume alcohol or illegal or unauthorized drugs in the presence of the licensee; or
 - (6) Failing to report any suspected act of child or dependent adult abuse as required by state law.
- 25.3(2)** Standard II—alcohol or drug abuse. Violation of this standard includes:
- a. Being on school premises or at a school-sponsored activity involving students while under the influence of, possessing, using, or consuming illegal or unauthorized drugs or abusing legal drugs.
 - b. Being on school premises or at a school-sponsored activity involving students while under the influence of, possessing, using, or consuming alcohol.

25.3(3) Standard III—misrepresentation, falsification of information. Violation of this standard includes:

- a. Falsifying or deliberately misrepresenting or omitting material information regarding professional qualifications, criminal history, college credit, staff development credit, degrees, academic award, or employment history when applying for employment or licensure.
- b. Falsifying or deliberately misrepresenting or omitting material information regarding compliance reports submitted to federal, state, and other governmental agencies.
- c. Falsifying or deliberately misrepresenting or omitting material information submitted in the course of an official inquiry or investigation.
- d. Falsifying any records or information submitted to the board in compliance with the license renewal requirements imposed under 282—Chapter 17.
- e. Falsifying or deliberately misrepresenting or omitting material information regarding the evaluation of students or personnel, including improper administration of any standardized tests, including, but not limited to, changing test answers, providing test answers, copying or teaching identified test items, or using inappropriate accommodations or modifications for such tests.

25.3(4) Standard IV—misuse of public funds and property. Violation of this standard includes:

- a. Failing to account for funds collected that were entrusted to the practitioner in an educational context.
- b. Converting public property or funds to the personal use of the practitioner.
- c. Submitting fraudulent requests for reimbursement of expenses or for pay.
- d. Combining public or school-related funds with personal funds.
- e. Failing to use time or funds granted for the purpose for which they were intended.

25.3(5) Standard V—violations of contractual obligations.

a. Violation of this standard includes:

- (1) Signing a written professional employment contract while under contract with another school, school district, or area education agency.
 - (2) Asking a practitioner to sign a written professional employment contract before the practitioner has been unconditionally released from a current contract. An administrator shall make a good faith effort to determine whether the practitioner has been released from the current contract.
 - (3) Abandoning a written professional employment contract without prior unconditional release by the employer.
 - (4) As an employer, executing a written professional employment contract with a practitioner, which requires the performance of duties that the practitioner is not legally qualified to perform.
 - (5) As a practitioner, executing a written professional employment contract, which requires the performance of duties that the practitioner is not legally qualified to perform.
- b. In addressing complaints based upon contractual obligations, the board shall consider factors beyond the practitioner's control. For purposes of enforcement of this standard, a practitioner will not be found to have abandoned an existing contract if:
- (1) The practitioner obtained a release from the employing board before discontinuing services under the contract; or
 - (2) The practitioner provided notice to the employing board no later than the latest of the following dates:
 1. The practitioner's last work day of the school year;

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2. The date set for return of the contract as specified in statute; or

3. June 30.

25.3(6) Standard VI—unethical practice toward other members of the profession, parents, students, and the community. Violation of this standard includes:

a. Denying the student, without just cause, access to varying points of view.

b. Deliberately suppressing or distorting subject matter for which the educator bears responsibility.

c. Failing to make reasonable effort to protect the health and safety of the student or creating conditions harmful to student learning.

d. Conducting professional business in such a way that the practitioner repeatedly exposes the student or other members of the profession to unnecessary embarrassment or disparagement.

e. Engaging in any act of illegal discrimination, or otherwise denying a student or practitioner participation in the benefits of any program on the grounds of race, color, religion, age, sex, disability, marital status, sexual orientation, or national origin.

f. Soliciting students or parents of students to purchase equipment, supplies, or services from the practitioner for the practitioner's personal advantage.

g. Accepting gifts from vendors or potential vendors where there may be the appearance of or an actual conflict of interest.

h. Intentionally disclosing confidential information including, but not limited to, unauthorized sharing of information concerning student academic and disciplinary records, health and medical information, assessment or testing results, or family income. Licensees shall comply with state and federal laws and local school board policies relating to the confidentiality of student records, unless disclosure is required or permitted by law.

i. Refusing to participate in a professional inquiry when requested by the board.

j. Aiding, assisting, or abetting an unlicensed person in the completion of acts for which licensure is required.

k. Failing to self-report to the board within 60 days any founded child abuse report, or any conviction for a criminal offense listed in 25.3(1)"b"(1) which requires revocation of the practitioner's license.

l. Delegating assigned tasks to unqualified personnel.

m. Failing to comply with federal, state, and local laws applicable to the fulfillment of professional obligations.

n. Allowing another person to use one's practitioner license for any purpose.

o. Performing services beyond the authorized scope of practice for which the individual is licensed or prepared.

25.3(7) Standard VII—compliance with state law governing student loan obligations and child support obligations. Violation of this standard includes:

a. Failing to comply with 282—Chapter 9 concerning repayment of student loans.

b. Failing to comply with 282—Chapter 10 concerning child support obligations.

25.3(8) Standard VIII—incompetence. Violation of this standard includes, but is not limited to:

a. Willfully or repeatedly departing from or failing to conform to the minimum standards of acceptable and prevailing educational practice in the state of Iowa.

b. Willfully or repeatedly failing to practice with reasonable skill and safety.

These rules are intended to implement Iowa Code section 272.2(1)"a."

ARC 3313B**EDUCATIONAL EXAMINERS
BOARD[282]****Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"b."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 272.2, the Board of Educational Examiners hereby gives Notice of Intended Action to amend Chapter 14, "Issuance of Practitioner's Licenses and Endorsements," Iowa Administrative Code.

The proposed amendment expands the wording of a Class E (formerly called "Emergency") license to include the denial of a Class E license if no progress has been made on a Class A (one-year), Class B (two-year), Class C (three-year), or Class D (two-year career and technical) license unless extenuating circumstances can be verified.

A waiver provision is not included. The Board has adopted a uniform waiver rule.

Any interested party or persons may present their views either orally or in writing at the public hearing that will be held Tuesday, May 18, 2004, at 1 p.m. in Room 3 North, Third Floor, Grimes State Office Building, East 14th Street and Grand Avenue, Des Moines, Iowa 50319.

At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the proposed amendment. Persons who wish to make oral presentations at the public hearing may contact the Executive Director, Board of Educational Examiners, Grimes State Office Building, East 14th Street and Grand Avenue, Des Moines, Iowa 50319-0147, or at (515)281-5849, prior to the date of the public hearing.

Any person who intends to attend the public hearing and requires special accommodations for specific needs, such as a sign language interpreter, should contact the office of the Executive Director at (515)281-5849.

Any interested person may make written comments or suggestions on the proposed amendment before 4 p.m. on Friday, May 21, 2004. Written comments and suggestions should be addressed to Dr. Anne E. Kruse, Executive Director, Board of Educational Examiners, at the above address, or sent by E-mail to anne.kruse@ed.state.ia.us, or by fax to (515)281-7669.

This amendment is intended to implement Iowa Code chapter 272.

The following amendment is proposed.

Amend rule 282—14.131(272) as follows:

282—14.131(272) Requirements for a Class E license. A nonrenewable license valid for one year may be issued to an individual based upon an expired Class A, Class B, Class C, Class D or teacher exchange license. The holder of an expired license shall be eligible to receive a Class E license upon application and submission of all required materials. The application process will require transcripts of coursework completed during the term of the expired license, a program of study indicating the coursework necessary to obtain full licensure, and registration for coursework to be completed during the term of the Class E license. *The Class E license will be*

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denied if the applicant has not completed any coursework during the term of the Class A, Class B, Class C, or Class D license unless extenuating circumstances are verified.

ARC 3312B

EDUCATIONAL EXAMINERS BOARD[282]

Amended Notice of Intended Action

Pursuant to the authority of Iowa Code section 272.2, the Board of Educational Examiners proposed to adopt new Chapter 26, "Code of Rights and Responsibilities," Iowa Administrative Code, in a Notice of Intended Action published in the Iowa Administrative Bulletin on January 7, 2004, as **ARC 3090B**.

In 1989, the Board developed a Canon of Rights and Responsibilities but did not adopt rules for this purpose. New Chapter 26 is intended to outline a practitioner's rights and responsibilities in becoming a member of the profession.

After the public comment period and after a review by the Board, the Board of Educational Examiners subsequently decided to omit the first entry under the responsibilities listed in proposed rule 282—26.3(272) and renumber the remaining entries. In addition, the Board desires that new Chapter 26 be moved forward on the same timetable as new Chapter 25.

A waiver provision is not included. The Board has adopted a uniform waiver rule.

Any interested person may make written comments or suggestions on the proposed rules before 4 p.m. on Friday, May 21, 2004. Written comments and suggestions should be addressed to Dr. Anne E. Kruse, Executive Director, Board of Educational Examiners, at the above address, or sent by E-mail to anne.kruse@ed.state.ia.us, or by fax to (515) 281-7669.

These rules are intended to implement Iowa Code section 272.2(1)"a."

The following **new** chapter is proposed.

CHAPTER 26 CODE OF RIGHTS AND RESPONSIBILITIES

282—26.1(272) Purpose. The code of professional conduct and ethics in 282—Chapter 25* defines unprofessional and unethical conduct justifying disciplinary sanction. The board acknowledges that the discharge of professional obligations should occur in recognition of certain fundamental rights and responsibilities. Accordingly, the board recognizes the following rights and responsibilities of all educators licensed under Iowa Code chapter 272 and agrees that the exercise of these rights and responsibilities may present mitigating facts and circumstances in the board's evaluation of allegations of unprofessional or unethical conduct.

282—26.2(272) Rights. Educators licensed under Iowa Code chapter 272 have the following rights:

1. The educator has a right to be licensed and endorsed under professional standards established and enforced by the board.
2. The educator has a right to refuse assignments for which the educator is not legally authorized, in terms of holding a valid Iowa license with the appropriate endorsement(s) or approval(s).

3. The educator has a right, subject to board and administrator authority, to exercise professional judgment in the evaluation, selection, and use of teaching methods and instructional materials appropriate to the needs, abilities, and background of each student.

282—26.3(272) Responsibilities. Educators licensed under Iowa Code chapter 272 have the following responsibilities:

1. The educator has a responsibility to maintain and improve the educator's professional competence.
2. The educator has a responsibility to accept only those assignments for which the educator is legally authorized.
3. The educator has a responsibility to provide conditions that are conducive to teaching and student learning.
4. The educator shall protect students from conditions harmful to learning or to health or safety.
5. The educator shall not, without just cause, restrain a student from independent action in the pursuit of learning and shall not, without just cause, deny a student access to varying points of view.
6. The educator shall not use professional relationships with students for private advantage.
7. The educator shall not discriminate against any student on the grounds of national or ethnic origin, religion, age, sex, disability, sexual orientation, or marital status, nor grant any discriminatory consideration or advantage.
8. The educator shall accord just and equitable treatment to all members of the profession.
9. The educator shall keep in confidence personally identifiable information regarding a student or the student's family members that has been obtained in the course of professional service, unless disclosure is required by law or is necessary for the personal safety of the student or others.
10. The educator who has reasonable basis to believe that a student has been abused, as defined by law, shall make all reports required by law and the Iowa Administrative Code and which are necessary to ensure the safety and well-being of the student.
11. In the administration of discipline, the educator shall treat all students with respect and in compliance with all policies of the school district served by the educator.
12. The educator shall provide accurate, truthful, and complete information to the board and to the local education system concerning all licensure transactions.
13. The educator shall not refuse to participate in a professional inquiry, when requested by the board.
14. The educator shall not require or direct another educator to violate any provisions of the code of professional conduct and ethics or any rights of a student, parent, educator or citizen.
15. The educator shall not delegate assigned tasks to unqualified personnel.

These rules are intended to implement Iowa Code section 272.2(1)"a."

*See **ARC 3311B** herein.

ARC 3327B**HUMAN SERVICES
DEPARTMENT[441]****Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"b."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 249A.4 and 2003 Iowa Acts, chapter 118, section 4, the Department of Human Services proposes to amend Chapter 77, "Conditions of Participation for Providers of Medical and Remedial Care," Chapter 78, "Amount, Duration, and Scope of Medical and Remedial Services," Chapter 79, "Other Policies Relating to Providers of Medical and Remedial Care," and Chapter 83, "Medicaid Waiver Services," Iowa Administrative Code.

These amendments add day habilitation as a covered service under the Medicaid home- and community-based services waiver for persons with mental retardation. In 2003 Iowa Acts, chapter 118, section 1, the Iowa General Assembly directed the Department to amend the waiver to include several services already offered under other waivers (adult day care, prevocational services, and transportation) and a new service, day habilitation.

Adult day care, prevocational services, and transportation were added to the waiver effective July 1, 2003, through **ARC 2575B**, published in the Iowa Administrative Bulletin on July 9, 2003. Service definitions and payment methodologies have now been developed for day habilitation. Day habilitation services are included in the waiver renewal request being submitted for state fiscal year 2005.

Day habilitation services will be another choice for consumers in the array of services that can be accessed under the waiver. Day habilitation may be a more appropriate choice for some consumers who are now receiving adult day care or prevocational services under the waiver. Day habilitation services are intended to provide teaching and coaching in "life skills" that a consumer has not yet mastered. Services provide more than protective supervision but are not targeted at developing vocational skills. The overall cost limit for a consumer's total waiver services remains the same.

These amendments do not provide for waivers in specified situations because they provide a benefit to consumers by expanding the array of services available. Individuals may request a waiver under the Department's general rule at 441—1.8(17A,217).

Any interested person may make written comments on the proposed amendments on or before May 19, 2004. Comments should be directed to the Office of Policy Analysis, Department of Human Services, Hoover State Office Building, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. Comments may be sent by fax to (515)281-4980 or by E-mail to policyanalysis@dhs.state.ia.us.

These amendments are intended to implement Iowa Code Supplement section 249A.12, subsection 6(b).

The following amendments are proposed.

ITEM 1. Amend rule 441—77.37(249A) by adding the following **new** subrule:

77.37(27) Day habilitation providers. Day habilitation services may be provided by:

a. Agencies accredited by the Commission on Accreditation of Rehabilitation Facilities to provide services that qualify as day habilitation under 441—subrule 78.41(14).

b. Agencies that have applied to the Commission on Accreditation of Rehabilitation Facilities within the last 12 months for accreditation to provide services that qualify as day habilitation under 441—subrule 78.41(14). An agency that has not received accreditation within 12 months of application is no longer a qualified provider.

c. Agencies accredited by the Council on Quality and Leadership.

d. Agencies that have applied to the Council on Quality and Leadership for accreditation within the last 12 months. An agency that has not received accreditation within 12 months of application is no longer a qualified provider.

ITEM 2. Amend rule 441—78.41(249A) by adding the following **new** subrule:

78.41(14) Day habilitation services.

a. Scope. Day habilitation services are services that assist or support the consumer in developing or maintaining life skills and community integration. Services must enable or enhance the consumer's intellectual functioning, physical and emotional health and development, language and communication development, cognitive functioning, socialization and community integration, functional skill development, behavior management, responsibility and self-direction, daily living activities, self-advocacy skills, or mobility.

b. Family training option. Day habilitation services may include training families in treatment and support methodologies or in the care and use of equipment. Family training may be provided in the consumer's home. The unit of service is an hour. The units of services payable are limited to a maximum of 10 hours per month.

c. Unit of service. Except as provided in paragraph "b," the unit of service may be an hour, a half-day (1 to 4 hours), or a full day (4 to 8 hours).

d. Exclusions.

(1) Services shall not be provided in the consumer's home, except as provided in paragraph "b." For this purpose, services provided in a residential care facility where the consumer lives are not considered to be provided in the consumer's home.

(2) Services shall not include vocational or prevocational services and shall not involve paid work.

(3) Services shall not duplicate or replace education or related services defined in Public Law 94-142, the Education of the Handicapped Act.

(4) Services shall not be provided simultaneously with other Medicaid-funded services.

ITEM 3. Amend subrule **79.1(2)**, provider category "HCBS MR waiver service providers," by adopting **new** numbered paragraph "**14**" as follows:

<u>Provider category</u>	<u>Basis of reimbursement</u>	<u>Upper limit</u>
14. Day habilitation	Fee schedule	County contract rate or, in the absence of a contract rate, \$12.33 per hour, \$30 per half- day, or \$60 per day

HUMAN SERVICES DEPARTMENT[441](cont'd)

ITEM 4. Amend subrule **83.61(1)** by adding the following **new** paragraph:

1. For day habilitation, be 16 years of age or older.

ITEM 5. Amend rule 441—83.66(249A) as follows:

441—83.66(249A) Allowable services. Services allowable under the HCBS MR waiver are supported community living, respite, personal emergency response system, nursing, home health aide, home and vehicle modifications, supported employment, consumer-directed attendant care services, interim medical monitoring and treatment services, transportation, adult day care, *day habilitation*, and prevocational services as set forth in rule 441—78.41(249A).

ARC 3328B

HUMAN SERVICES
DEPARTMENT[441]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code sections 217.6, 252B.20(1)“e,” and 252H.4(4), the Department of Human Services proposes to amend Chapter 99, “Support Establishment and Adjustment Services,” Iowa Administrative Code.

These amendments allow the Child Support Recovery Unit to assist parents in suspending or reinstating a support obligation for a child who has gone to live with the other parent if the support order provides for a “step change.” A step change means that the order specifies the reduced amount of the support obligation as the number of children supported decreases. Under current rules, the Unit assists in the suspension of an order only when the basis for suspension applies to all of the children under the order, either when the parents have reconciled and are living together with their children or when all of the children have gone to live with the other parent.

The suspension is a temporary order. It becomes permanent, terminating the support obligation, after six months unless circumstances change. The support obligation may be reinstated within the six-month period if requested by either parent or if the child begins receiving public assistance. These amendments allow “partial” reinstatement of the obligation under an order with a step change provision, parallel with the “partial” suspension.

These amendments remove provisions for denying the suspension or reinstatement of an obligation when the request is incomplete. The Unit will contact the parent to complete the request before making a decision on whether suspension or reinstatement criteria are met.

The statute does not provide for recalculating the amount of support in the order as part of the suspension or reinstatement process. Parents may request a review and adjustment of an order or a cost-of-living alteration of an order in a separate process. Suspension or reinstatement will not count as a modification in determining whether the parents have requested review and adjustment or administrative modification within two years of the last modification (the minimum time between requests).

These amendments do not provide for waivers in specified situations since they remove restrictions and because policies for suspension and reinstatement are set by statute.

Any interested person may make written comments on the proposed amendments on or before June 16, 2004. Comments should be directed to the Office of Policy Analysis, Department of Human Services, Hoover State Office Building, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. Comments may be sent by fax to (515)281-4980 or by E-mail to policyanalysis@dhs.state.ia.us.

These amendments are intended to implement Iowa Code sections 252B.20, 252H.4, 252H.19, and 252H.23.

The following amendments are proposed.

ITEM 1. Amend subrule 99.62(2) as follows:

99.62(2) Review by request. A review shall be conducted upon the request of the child support recovery agency of another state or upon the written request of either parent subject to the order submitted on Form 470-2749, Request to Modify a Child Support Order.

a. One review may be conducted every two years when the review is being conducted at the request of either parent. The request for review may be no earlier than two years from the filing date of the support order or most recent modification or the last completed review, whichever is later.

b. For purposes of this subrule, if a portion of an order was terminated or reinstated in accordance with division VI of this chapter, that termination or reinstatement shall not be considered a modification.

ITEM 2. Amend subrule **99.83(6)**, paragraph “b,” as follows:

b. At least two years have passed since the order was filed with the court or was last reviewed, modified, or altered. For purposes of this subrule, if a portion of an order was terminated or reinstated in accordance with division VI of this chapter, that termination or reinstatement shall not be considered a modification.

ITEM 3. Amend rule **441—99.101(252B)** by adopting the following **new** definition in alphabetical order:

“Step change” shall mean changes specified in the support order stating the amount of the child support obligation as the number of children entitled to support under the order changes.

ITEM 4. Amend rule 441—99.102(252B) as follows:

441—99.102(252B) Availability of service. The child support recovery unit shall provide the services described in this division only with respect to support orders entered or registered in this state for which the unit is providing enforcement services in accordance with Iowa Code chapter 252B to collect current or accrued support.

99.102(1) Services described in this division shall only be provided if a court in this state would have continuing, exclusive jurisdiction to suspend and reinstate the order under Iowa Code chapter 252K.

99.102(2) Services described in this division shall be provided only if no prior request for termination of all or part of a support order under this division has been filed with the unit during the two-year period preceding the request.

ITEM 5. Amend subrules 99.103(1) and 99.103(3) as follows:

99.103(1) Reconciliation. The child support recovery unit shall assist an obligor and obligee in suspending support for a child and, if contained in a child support order, spousal support, when the obligor and obligee are reconciled and are

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residing together, with all of the children at least one child entitled to support under the order, in the same household.

99.103(3) ~~All affected~~ *Affected* children. The unit shall assist an obligor and obligee in suspending *all or part of* a support order as provided in this division ~~only when if~~ the basis for suspension as described in this rule applies to all of the children entitled to support under the order to be suspended. ~~The unit shall not, under this division, assist an obligor and obligee in suspending a proportion of the support order when the basis for suspension applies to some, but not all, of the children entitled to support under the order as follows:~~

a. If the basis for suspension applies to all of the children, the unit shall assist with suspending support obligations for all of the children.

b. If the basis for suspension applies to at least one but not all of the children, and if the support order includes a step change, the unit shall assist in suspending the support obligations for children for whom the basis for suspension applies.

ITEM 6. Amend rule 441—99.104(252B) as follows:

Amend subrule 99.104(2), introductory paragraph, as follows:

99.104(2) Acknowledging requests. The local unit providing services shall issue a written notice to the obligor and obligee indicating whether ~~the~~ *a properly completed* request is accepted or denied.

Amend subrule **99.104(3)** by rescinding and reserving paragraphs “b” and “c.”

ITEM 7. Amend subrules 99.105(1) and 99.105(2) as follows:

99.105(1) When the basis for suspension is reconciliation, the suspension shall apply to any ongoing support provisions of the order, including medical support, with respect to any child; *residing with the parents and with respect to any spouse or former spouse* entitled to support under the order to be suspended.

99.105(2) When the basis for suspension is a change in residency of *one or more of* the children entitled to support, the suspension shall apply to ongoing support provisions, including medical support, with respect to only the children entitled to support under the order *who are residing with the obligor*. Any spousal support also ordered in the same support order shall remain unaffected by this action.

ITEM 8. Amend rule 441—99.106(252B) as follows:

441—99.106(252B) Suspension of enforcement of current support. The child support recovery unit shall suspend enforcement actions intended to collect or enforce any current support obligation that would have accrued during the time the support ~~order~~ *obligation* is suspended. The unit shall continue to provide all appropriate enforcement services to collect any *support not suspended and any* arrearages that accrued ~~prior to before~~ the effective date of the suspension.

ITEM 9. Amend rule 441—99.107(252B) as follows:

Amend the introductory paragraph as follows:

441—99.107(252B) Request for reinstatement. The unit may request that the court reinstate the suspended support ~~order~~ *obligation* in accordance with the procedures found in Iowa Code section 252B.20.

Amend subrules 99.107(2) and 99.107(4) as follows:

99.107(2) The unit may, at its own initiative, request that the court reinstate a support ~~order~~ *obligation* when it is determined that ~~the children affected by a child for whom the obligation was suspended order are~~ *is* receiving public assistance benefits.

99.107(4) *A properly completed* request for reinstatement shall be denied when any of the following conditions exist:

a. The request is made by someone other than the obligor, obligee, or the obligor's or obligee's attorney.

b. ~~The request is not signed, or does not contain sufficient information to identify the order and parties involved.~~

c. The unit is no longer providing enforcement services for the suspended order.

d. The request is received more than six months since the date of the filing of the order suspending support.

e. The request is for partial reinstatement of the suspended support order *for some but not all of the children and the order does not contain a step change.*

f. A court in this state would not have continuing, exclusive jurisdiction to reinstate the order under Iowa Code chapter 252K.

ITEM 10. Amend subrules 99.108(1) and 99.108(2) as follows:

99.108(1) The unit shall request that the court reinstate ~~all support provisions a spousal support provision~~ previously suspended, ~~including spousal support~~ if included in the suspension in accordance with subrule 99.105(1) *and if the unit receives a properly completed request from the obligor or obligee.*

99.108(2) ~~The~~ *If the support order contains a step change, the unit shall not seek to have a the previously suspended support for a child suspended order partially* reinstated under this division when ~~it is determined that the basis for suspension as provided in subrules 99.103(2) and 99.103(3) continues to apply to some, but not all, of the persons entitled to children for whom support under the terms of the suspended order had been suspended.~~ This provision shall not prohibit any party, including the child support recovery unit, from taking other action to establish support as provided for by law.

ITEM 11. Amend rule 441—99.109(252B) as follows:

441—99.109(252B) Reinstatement of enforcement of support. If a suspended support ~~order~~ *obligation* is reinstated, the unit shall also reinstate all appropriate enforcement measures to enforce all reinstated ongoing support provisions of the support order.

ARC 3329B

HUMAN SERVICES DEPARTMENT[441]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 237A.12, the Department of Human Services proposes to amend Chapter 110, “Child Development Homes,” Iowa Administrative Code.

This amendment changes the registration requirements for child development homes in Category C. Category C homes may care for 12 to 16 children. A second qualified provider must be present whenever 8 children or more are present in

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the home. Current rules require both providers to meet Category C qualifications. This amendment allows the second provider in a Category C home to meet Category B qualifications.

Category C providers must be older (at least 21 years of age instead of 20) and have three more years of child care experience than Category B providers (four years, or five years if the provider does not have relevant postsecondary education). Some providers have reported that it is difficult to find a second provider who meets these more stringent qualifications. The Department believes that allowing this flexibility is a reasonable accommodation and will still provide for effective leadership in a Category C home.

This amendment does not provide for waivers in specified situations because this change is a benefit to providers.

Any interested person may make written comments on the proposed amendment on or before May 19, 2004. Comments should be directed to the Office of Policy Analysis, Department of Human Services, Hoover State Office Building, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. Comments may be sent by fax to (515)281-4980 or by E-mail to policyanalysis@dhs.state.ia.us.

This amendment is intended to implement Iowa Code section 237A.3A.

The following amendment is proposed.

Amend subrule 110.10(2) as follows:

110.10(2) Provider qualifications.

a. *One provider who meets the following qualifications must always be present:*

(1) The provider shall be at least 21 years old.

b. (2) The provider shall have a high school diploma or GED.

c. (3) The provider shall either:

(1) Have five years of experience as a registered or nonregistered child care provider, or

(2) Have a child development associate credential or any two-year or four-year degree in a child care-related field and four years of experience as a registered or nonregistered child care home provider.

b. *The coprovider shall meet the requirements of subrule 110.9(2).*

ARC 3322B

IOWA FINANCE AUTHORITY[265]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code sections 17A.3(1), 16.5(17), 16.91(5) and 16.91(8), the Iowa Finance Authority hereby gives Notice of Intended Action to amend Chapter 9, “Title Guaranty Division,” Iowa Administrative Code.

This rule making rescinds rules 265—9.1(16) through 265—9.19(16) and adopts new rules 265—9.1(16) through 265—9.15(16) concerning the Title Guaranty Division. The new rules detail the mission, organization, program and operations of the Title Guaranty Division of the Iowa Finance Authority, including the office where and the means by which interested persons may obtain information and make

submissions or requests. The existing rule 265—9.20(78GA,ch54), concerning the mortgage release certificate program, and rule 265—9.21(16), concerning the seal, are not amended as part of this rule-making action.

These new rules are proposed in accordance with Executive Order Number 8 issued by the Governor on September 14, 1999.

Chapter 9 does not provide for waivers except as required by Iowa Code section 16.91(5). Persons seeking waivers for other matters must petition the Authority for a waiver in the manner set forth under 265—Chapter 18.

The Authority will receive written comments on the proposed rules until 5 p.m. on May 18, 2004. Comments may be addressed to James Smith, Iowa Finance Authority, 100 East Grand Avenue, Suite 250, Des Moines, Iowa 50309. Comments may also be faxed to James Smith at (515) 242-4957 or may be E-mailed to james.smith@ifa.state.ia.us. Persons who wish to comment orally should contact James Smith at (515)242-4990.

These rules are intended to implement Iowa Code sections 17A.3(1), 16.5(17), 16.91(5) and 16.91(8).

The following amendment is proposed.

Rescind rules **265—9.1(16)** through **265—9.19(16)** and adopt in lieu thereof **new** rules 265—9.1(16) through 265—9.15(16):

265—9.1(16) Purpose. This chapter describes the mission, organization, programs and operations of the title guaranty division (division) of the Iowa finance authority (authority), including the office where and the means by which interested persons may obtain information and make submissions or requests.

265—9.2(16) Mission. The mission of the division is to operate a program that offers guaranties of real property titles in order to provide, as an adjunct to the abstract-attorney’s title opinion system, a low-cost mechanism to facilitate mortgage lenders’ participation in the secondary market and add to the integrity of the land-title transfer system in the state. Surplus funds in the title guaranty fund shall be transferred to the authority’s housing program fund after providing for adequate reserves and for the operating expenses of the division.

265—9.3(16) Definitions. The following words and phrases, when used in this chapter, shall have the meanings set forth below unless a meaning is inconsistent with the manifest intent or the context of a particular rule:

“Certificate” means the title guaranty certificate including any part or schedule and any endorsements.

“Commitment” means the commitment to insure title including any part or schedule and any endorsements.

“Electronic record,” for the purposes of the title guaranty program, means a record created, generated, sent, communicated, received, or stored by electronic means that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

“Participant” means a participating attorney and a participating abstractor.

“Participating abstractor” means an abstractor who is authorized to participate in the title guaranty program and who is in full compliance with the abstractor’s participation agreement, the Code of Iowa, these rules, manuals, and guides and any other written or oral instructions or requirements given by the division.

“Participating attorney” means an attorney who is authorized to participate in the title guaranty program and who is in full compliance with the attorney’s participation agreement,

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the Code of Iowa, these rules, manuals, and guides and any other written or oral instructions or requirements given by the division and who is not subject to current disciplinary proceedings by the Iowa supreme court.

“Residential property,” for the purposes of the title guaranty program, means residential real estate consisting of single-family housing or multifamily housing of no more than six units.

“Supervision and control,” for the purposes of the title guaranty program, means that a participant’s shareholders, partners, associates, secretaries, paralegals, and other persons under the participant’s supervision or control who transact the business of abstracting, which includes but is not limited to any manner of title search or review, opining on titles to real estate, or issuing commitments or certificates at the direction of or in the name of the participant, shall comply with the requirements of the contracts, forms, manuals, instructions, and guides and any other written or oral instructions given by the division. A participant shall be liable to the division for loss or damage suffered by the division resulting from acts or omissions of the participant’s shareholders, partners, associates, secretaries, paralegals, and other persons under the participant’s supervision or control who transact the business of abstracting, which includes but is not limited to any manner of title search or review, opining on titles to real estate, or issuing commitments or certificates at the direction of or in the name of the participant as an agent of the division as though the act or omission were that of the participant.

265—9.4(16) Organization.

9.4(1) Location. The office of the division is located at 200 East Grand Avenue, Suite 350, Des Moines, Iowa 50309. Office hours are 8 a.m. to 4:30 p.m. Monday through Friday, excluding legal holidays. The division’s Web site address is www.ifahome.com/partner_tgd.asp, and the division’s telephone and facsimile numbers are as follows: (515)242-4989 (general telephone number); 1-800-843-0201 (toll-free telephone number); (515)242-4890 (TTY); and (515)242-4994 (facsimile).

9.4(2) Division board and staff. The powers of the division are vested in and exercised by a board of five members, appointed by the governor and subject to confirmation by the senate. The board membership includes an attorney, an abstractor, a real estate broker, a representative of a mortgage-lender, and a representative of the housing development industry. A chair and vice-chair are elected annually by the members, generally at the first meeting following July 1 of each year, which is the beginning of the fiscal year. Division staff consists of a director and additional staff as approved by the executive director of the authority.

9.4(3) Division director. The executive director of the authority appoints the director of the division. The division director shall be an attorney licensed to practice law in the state of Iowa and in good standing with the Iowa supreme court at all times while acting as the division director. The appointment of and compensation for the division director are exempt from the merit system provisions of Iowa Code chapter 19A. The division director serves as an ex-officio member of the division board and as secretary to the division board.

9.4(4) Meetings. Meetings of the division board are held quarterly on the date and time determined by the board. Meetings of the division board may also be held at the call of the chair or on written request of two members. The division will give advance public notice of the specific date, time and place of each division board meeting, and will post the tentative agenda for each meeting at least 24 hours before com-

mencement of the meeting at the division office and at the main office of the authority, as well as on the authority’s Web site. Meetings may occasionally be conducted by electronic means. Any interested party may attend and observe board meetings except for any portion of a meeting that may be closed pursuant to Iowa Code section 21.5. The minutes of the board meetings are available for viewing at the division’s office or via the authority’s Web site. Three members of the division board constitute a quorum. An affirmative vote of a majority of the appointed members is necessary for any substantive action taken by the division board. The majority shall not include any board member who has a conflict of interest, and a statement of a conflict of interest shall be conclusive for this purpose.

265—9.5(16) Location where public may obtain information. Requests for information, inquiries, submissions, petitions and other requests may be directed to the division at the address set forth in subrule 9.4(1). Requests may be made personally, by telephone, mail, E-mail or any other medium available.

265—9.6(16) Title guaranty program.

9.6(1) General. The division operates a program to offer guaranties of real property titles in the state through the issuance of title guaranty certificates. Title guaranty certificates may be issued by the division or by participating attorneys.

9.6(2) Participating attorneys. An attorney licensed to practice law in the state of Iowa may participate in the title guaranty program upon approval by the division director of an application to the division and upon execution and acceptance by the division director of an attorney’s participation agreement.

a. Authority of participating attorney. A participating attorney is authorized to act as an agent of the division but only for the purposes and in the manner set forth in the attorney’s participation agreement, the Code of Iowa, these rules, manuals, requirements and any other written or oral instructions given by the division and in no other manner whatsoever. The authority of the participating attorney under the preceding sentence is not exclusive and is subject to the rights of the authority, of the division and of other participating attorneys, agents, or representatives of the division to transact the business of opining on titles to real estate or issuing commitments or certificates and is further subject to the right of the division to appoint other participating attorneys.

b. License. A participating attorney shall be licensed to practice law in the state of Iowa and shall be in good standing with the Iowa supreme court at all times while acting as an agent of the division.

c. Errors and omissions insurance. A participating attorney shall maintain errors and omissions insurance at all times while acting as an agent of the division, with such coverage and in such amounts as the division board may direct from time to time by resolution.

The division will inform the Iowa State Bar Association, the Iowa Land Title Association, and any person requesting such information of any proposed change in the amount of required errors and omissions insurance at least 30 days prior to the date of the meeting at which the matter will be considered. Interested parties may submit evidence or statements in support of or in opposition to the proposal in writing or by personal appearance before the division board.

d. Participation fees. A participating attorney shall pay participation fees in such amounts and at such times as the division board may set from time to time by resolution. Par-

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ticipation fees set by the division board are subject to the approval of the authority board.

The division will inform the Iowa State Bar Association, the Iowa Land Title Association, and any person requesting such information of any proposed change in the amount of attorney participation fees at least 30 days prior to the date of the meeting at which the matter will be considered. Interested parties may submit evidence or statements in support of or in opposition to the proposal in writing or by personal appearance before the division board.

e. Training. A participating attorney shall complete division forms and procedures training prior to issuing title guaranty certificates as an agent of the division.

f. Underwriting determinations. A participating attorney shall make all underwriting determinations prior to or at the closing. If the participating attorney does not attend the closing and is not available by telephone during the closing, all underwriting determinations must have been made by the participating attorney issuing the opinion, commitment or certificate prior to closing. For purposes of this rule, the term "underwriting determinations" includes, but is not limited to, insuring access, reviewing gap searches, possible judgments, survey matters (including encroachments), unreleased mortgages or other liens, and any other matters disclosed by the opinion, commitment or other sources of title information. A participating attorney who causes or allows an erroneous underwriting determination to be made by someone other than a member of the division's legal staff or the participating attorney who issued the opinion, commitment or certificate shall be strictly liable to the division for loss or damage the division may suffer as a result of the erroneous underwriting determination.

A participating attorney shall make all underwriting determinations arising out of the issuance of an attorney title opinion or a title commitment using both:

1. Generally accepted and prudent title examining methods; and
2. Procedures implemented by the division and outlined in these rules, manuals, and guides and any other written or oral instructions or requirements given by the division.

Any underwriting determination about which there may be a bona fide difference of opinion among local lawyers and that is not specifically covered by materials provided by the division shall be approved by division legal staff.

g. Title files. A participating attorney shall maintain separate title files or maintain client files in such a manner that information pertaining to activities of the participating attorney as an agent and underwriter for the division are readily available to the division. A participating attorney shall maintain title files and the title portion of client files for a period of ten years after the effective date of the certificate or certificates.

h. Forms. The division will provide forms to a participating attorney for use in acting as an agent of the division. A participating attorney may not alter any form supplied by the division, or use a form supplied by another person or entity to bind the division, or otherwise bind the division to liability with a form, other writing or representation not supplied or authorized by the division.

A participating attorney who obtains serialized forms from the division must maintain a forms register, in a format approved or supplied by the division, in which the participating attorney shall enter a record of and show the disposition of all serialized forms. In addition, the participating attorney shall:

1. Return the original of any damaged, spoiled, or otherwise unusable serialized form to the division;
2. Return the original of any unused serialized form to the division at the request of the division; and
3. Not transfer or attempt to transfer unissued serialized forms to another participating attorney or other person or entity unless authorized in writing by the division.

If a participating attorney fails to comply with the requirements of this rule, in addition to the division's other rights and remedies, the division may refuse to supply any forms to the participating attorney until the participating attorney complies with the requirements of this rule to the satisfaction of the division.

The participating attorney shall be liable to the division for loss or damage sustained by the division by reason of the loss of, misuse of, or inability of the participating attorney to account for any form supplied by the division, or the failure of the participating attorney to comply with the requirements of this rule.

i. Certificate amount limitations. A participating attorney shall obtain the written authorization of the division's legal staff prior to issuing a commitment or certificate which exceeds such amounts as the division board may set from time to time by resolution. If any authorization required under this rule is not obtained through the act or omission of the participating attorney, the participating attorney shall be strictly liable to the division for any loss or damage resulting from issuance of the commitment or certificate.

9.6(3) Participating abstractors. An abstractor or abstracting concern may participate in the title guaranty program upon approval by the division director of an application to the division and upon execution and acceptance by the division director of an abstractor's participation agreement.

a. Authority of participating abstractor. A participating abstractor is authorized to act as an agent of the division but only for the purposes and in the manner set forth in the abstractor's participation agreement, the Code of Iowa, these rules, manuals, requirements and any other written or oral instructions given by the division and in no other manner whatsoever. The authority of the participating abstractor under the preceding sentence is not exclusive and is subject to the rights of the authority, of the division and of other participating abstractors, agents, or representatives of the division to transact the business of abstracting, which includes but is not limited to any manner of title search or review of titles to real estate, and is further subject to the right of the division to appoint other participating abstractors.

b. Title plant. Participating abstractors shall own or lease, and maintain and use in the preparation of abstracts, an up-to-date abstract title plant including tract indices for real estate for each county in which abstracts are prepared for titles to real property guaranteed by the division. Each of the tract indices shall be designated to encompass a geographical area of not more than one block in the case of platted real estate, nor more than one section in the case of unplatted real estate. The tract indices shall include a reference to all of the instruments affecting real estate recorded in the office of the county recorder, and the tract indices shall commence not less than 40 years prior to the effective date of the abstractor's participation in the title guaranty program.

c. Exempt attorneys. Participating attorneys who have been providing abstract services continuously from November 12, 1986, to the date of application to be a participating abstractor, either personally or through persons under their supervision and control, shall be exempt from the requirement to own or lease a title plant. This exemption is a person-

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al exemption of the individual participating attorney, is not transferable, and terminates at such time as the individual ceases providing abstracting services or upon the death or incapacity of the individual.

d. Errors and omissions insurance. A participating abstractor shall maintain errors and omissions insurance at all times while acting as an agent of the division, with such coverage and in such amounts as the division board may direct from time to time by resolution.

The division will inform the Iowa Land Title Association, the Iowa State Bar Association, and any person requesting such information of any proposed change in the amount of required errors and omissions insurance at least 30 days prior to the date of the meeting at which the matter will be considered. Interested parties may submit evidence or statements in support of or in opposition to the proposal in writing or by personal appearance before the division board.

e. Participation fees. A participating abstractor shall pay participation fees in such amounts and at such times as the division board may set from time to time by resolution. Participation fees set by the division board are subject to the approval of the authority board.

The division will inform the Iowa Land Title Association, the Iowa State Bar Association, and any person requesting such information of any proposed change in the amount of abstractor participation fees at least 30 days prior to the date of the meeting at which the matter will be considered. Interested parties may submit evidence or statements in support of or in opposition to the proposal in writing or by personal appearance before the division board.

9.6(4) Abstract of title. For the purposes of the title guaranty program, an abstract of title shall be a written or electronic summary of all matters of record including, but not limited to, grants, conveyances, easements, encumbrances, wills, and judicial proceedings affecting title to a specific parcel of real estate, together with a statement including, but not limited to, all liens, judgments, taxes or special assessments affecting the property and a certification by a participating abstractor that the summary is complete and accurate.

An abstract of title shall be brought up to date and certified by a participating abstractor prior to the issuance of a title guaranty certificate; provided that, in the event a titleholder undertakes to refinance a mortgage or grant a junior mortgage on residential property; and a title guaranty certificate was issued for a transaction while said titleholder owned the property; and no changes in the ownership or in the legal description of the property have occurred since the above described title guaranty certificate effective date, for the purposes of the title guaranty program, a title guaranty certificate may be issued for the refinanced or junior mortgage based on the coverage and exceptions from the above described prior title guaranty certificate and a search of the public records from the effective date of the above described prior title guaranty certificate including a ten-year judgment lien search against the titleholder. For the purposes of the title guaranty program, the search and title guaranty certificate issued for refinanced and junior mortgages pursuant to this rule shall be deemed to relate back to the abstract of title and title guaranty certificate issued for the transaction while the said titleholder owned the property.

All abstracts of title and searches shall be prepared and conducted in compliance with division procedures in effect at the time of the updating of the abstract or search. A participating abstractor shall retain a written or electronic copy of each abstract of title or search prepared for a title guaranty

certificate and shall provide such copy to the division upon request.

9.6(5) Attorney title opinion. All attorney title opinions shall be prepared and issued in compliance with division procedures in effect at the time of issue. A participating attorney shall retain a written or electronic copy of each attorney title opinion and shall provide such copy to the division upon request. Participating attorneys who are issuing agents for the division may issue a commitment as the preliminary attorney title opinion and the title guaranty certificate as the final attorney title opinion in compliance with division procedures in effect at the time of issue.

9.6(6) Participant's interest in property. No participant shall prepare an abstract of title or issue attorney title opinions, commitments, or certificates upon property in which the participant has an interest without prior authorization of the division.

265—9.7(16) Application for waiver of participation requirements. The division board shall consider applications for waiver of the requirements of Iowa Code section 16.91(5).

9.7(1) Applications for waiver of participation requirements shall be in writing and directed to the division board. The application shall:

a. State which participation requirements are requested to be waived; and

b. Include adequate supporting information and argument so that the division board may make an informed decision on the request.

9.7(2) The applicant may request to appear before the division board but shall not be required to make a personal appearance.

a. If the applicant appears before the division board regarding the application, the applicant may present additional evidence, including the testimony of witnesses in support of the application for waiver.

b. If the applicant does not make a personal appearance before the division board regarding the application, the board may proceed to make a decision based on the application and the supporting information submitted with the application for waiver.

9.7(3) The division will inform participating abstractors and participating attorneys in the county for which the waiver is requested, the Iowa State Bar Association, the Iowa Land Title Association, and any person requesting such information that an application for waiver has been made to the division. Interested parties may submit evidence or statements in support of or in opposition to the application in writing or by personal appearance before the division board. Notification to interested parties is not a requirement for the division board to consider the waiver, and failure to inform interested parties of an application for waiver shall not void or otherwise nullify any action or decision of the division board.

9.7(4) The division board may grant the waiver if the board finds:

a. That the requirements of Iowa Code section 16.91(5) impose a hardship to the attorney or abstractor; and

b. That the waiver is:

(1) Clearly in the public interest; or

(2) Absolutely necessary to ensure availability of title guaranties throughout the state.

9.7(5) The decision of the division board shall be final agency action.

265—9.8(16) Application for title guaranty certificates. The division may authorize entities engaged in the real estate industry to apply directly to the division for a title guaranty

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commitment or certificate to be issued by the division. The applicant shall complete and submit such forms and other information as the division may require and pay the appropriate fee. Entities engaged in the real estate industry which the division may authorize include, but are not limited to, mortgage lenders as defined in Iowa Code section 16.1(27), and closing and escrow companies.

265—9.9(16) Contracts, forms, manuals, instructions, and guides. The division shall adopt and issue such contracts, forms, manuals, instructions, and guides as the division deems necessary to set out participation standards and requirements, and such other matters that the division deems necessary for implementation and effective administration of the title guaranty program. The provisions of the manuals, instructions, and guides shall be applicable to participants in the title guaranty program.

9.9(1) Adoption. The contracts, forms, manuals, instructions, and guides will be adopted or revised or amended on approval of a majority vote of the division board, without publication of notice and without providing an opportunity for public comment. In accordance with Iowa Code section 17A.4(2), the contracts, forms, manuals, instructions, and guides are a classification of rule making for which notice and public participation are impracticable and unnecessary because:

- a. Iowa Code section 16.2 vests the powers of the division relating to the issuance of title guaranties in the division board, and Iowa Code section 16.91 authorizes the division board to operate the title guaranty program and adopt contracts, forms, and set fees;
- b. Such contracts, forms, manuals, instructions, and guides may need to be amended quickly to address title underwriting standards and procedures, to protect the division and its programs, and to ensure the efficient operation of the division; and
- c. Participants are agents or quasi agents of the division and the contracts, forms, manuals, instructions, and guides are intra-agency directives.

The division will inform the Iowa State Bar Association, the Iowa Land Title Association, and any person requesting such information of any proposed change in the contracts, forms, manuals, instructions, and guides at least 30 days prior to the date of the division board meeting at which the matter will be considered. Interested parties may submit evidence or statements in support of or in opposition to the proposal in writing or by personal appearance before the division board.

9.9(2) Availability. The contracts, forms, manuals, instructions, and guides are furnished to participants in the title guaranty program at no charge. They may be reviewed and copied in their entirety from the division's Web site. Copies shall be deposited with the administrative rules coordinator and at the state law library. Copies of paper editions for non-participants are available from the division upon request for a fee. The division will charge a fee to recover the costs of the binder, contents, and mailing for the paper editions. Current price information is available upon request from the division.

265—9.10(16) Rates. The division board shall fix the rate or fee, if any, for the owner's guaranty, the lender's guaranty, the various endorsements, the closing protection letter and any other product or service that will be offered by the division. The division shall set the rates by resolution and may change the rates from time to time in the same manner.

265—9.11(16) Fees and premiums. No participant in the title guaranty program shall charge or receive any portion of

the fee for the guaranty or the fee for any other product or service that is paid to the division.

9.11(1) A participant shall calculate the title certificate fees according to the applicable rate schedule in effect on the effective date of the commitment or of the certificate, whichever is earlier. A participant shall collect the fee in effect for any other product or service offered by the division at the time the product or service is sold.

9.11(2) A participant may charge and collect fees that are customarily charged for services or other products provided as part of a real property transaction.

9.11(3) All fees collected by a participant payable to the division shall be held for the use and benefit of the division until paid to the division. The participant shall remit the fees payable to the division at the time and in the manner directed by the division from time to time, but in no event later than the date of the issuance of the guaranty.

265—9.12(16) Audit procedures.

9.12(1) Serialized forms audit. The division will periodically supply to a participating attorney who issues title guaranty certificates a list of all serialized forms that, according to the division's records, are in the custody and control of the participating attorney. The participating attorney shall, within 15 days of receipt of the list of serialized forms, return the list to the division either with a certification that it is correct, or with an explanation of any discrepancies between the records of the division and the participating attorney.

9.12(2) Office audits. The division may, with or without notice to a participating abstractor or participating attorney, audit the participant at the participant's office. This audit may include, but need not be limited to, a review of the participant's commitment and policy issuance procedures, an audit of serialized forms, an audit and test of title plants and tract indices, and verification of the participant's compliance with participation agreements, the Code of Iowa, these rules, manuals, and guides and any other written or oral instructions or requirements of the division.

265—9.13(16) Claims.

9.13(1) Claim procedures. In the event of loss or damage or potential loss or damage arising by reason of a matter actually, possibly, or allegedly within the coverage of a commitment or certificate or by reason of any other matter for which the division is actually, possibly, or allegedly liable (referred to herein as a "claim"), the rights and responsibilities of the division and the participating abstractor and participating attorney are as follows:

a. Upon receipt of notice by a participant of a claim, the participant must notify the division in writing, setting forth and including at a minimum:

- (1) The name, address, and telephone number of the claimant and the claimant's attorney, if any;
- (2) The number assigned to the commitment and certificate and a copy of the commitment and certificate if not previously forwarded to the division; and
- (3) A description of the claim and copies of any documents, correspondence, surveys, title searches, or other writings, and other information supplied to or available to the participant relevant to the claim.

Under this rule, the participant shall notify the division within three business days of receipt of information about a claim and shall mail notification to the division by first-class mail at the division's address in subrule 9.4(1). In addition to the notice required by the preceding sentence, if the nature of the claim is such that the insured claimant or the division, or both, may suffer loss or damage that might be reduced or

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avoided by notice given more promptly than required by the preceding sentence, the participant shall notify the division by telephone, facsimile transmission, overnight mail or other overnight delivery service, or any combination of these methods.

b. When a participant receives a request from the division for information with respect to a claim, the participant shall supply to the division any documents, correspondence, surveys, abstracts of title, title searches, other writings, or other information known by or available to the participant and relevant to the claim, even if not specifically requested by the division. The participant's response to the division under this paragraph must be made within three days of the participant's receipt of the request and must be sent by first-class mail to the division employee, agent, or other authorized person who requested the information. In addition to the participant's response as required by the preceding sentence, if the nature of the claim is such that the insured claimant or the division, or both, may suffer loss or damage that might be reduced or avoided by a response quicker than that required by the preceding sentence, or if the division requests a quicker response, the participant shall respond by telephone, facsimile transmission, overnight mail or other overnight delivery service, or any combination of these methods, to the division employee, agent, or other authorized person requesting the information.

c. A participant shall cooperate fully in the investigation and resolution of a claim and shall supply any additional, new information that may come to the participant's attention with such promptness as the circumstances permit.

d. The division may, with or without prior notice to the participant or participants involved, investigate and resolve any claim in any manner that, in the division's sole discretion, the division may deem advisable. Investigation and resolution may include but are not limited to, determinations of liability, retention of counsel for the division or for the insured claimant, settlement with the insured claimant or other party, and recovery of amounts paid.

9.13(2) Claim loss recovery from participants.

a. Amounts paid by the division in the investigation and resolution of a claim, hereinafter referred to as a "claim loss," including, but not limited to, payments to the insured, payments to adverse claimants, attorneys' fees, and all other expenses and costs related to or arising from the claim in accordance with the provisions of this rule, are recoverable from a participant by the division.

b. In the absence of knowledge by the participant about the title defect or other matter causing the claim loss, the division shall not seek recovery from the participant when a claim loss arises from one or more of the following:

(1) Hidden defects, including, but not limited to, forged deeds and mortgages, false affidavits, and false statements of marital status;

(2) Errors by public officials in maintaining and indexing the public records including, but not limited to, errors by county assessors, recorders, clerks, and treasurers;

(3) Errors in these rules, the division's manuals, guides, procedures, and any other written or oral instructions or requirements given by the division that the participant relies upon in issuing an abstract of title, opinion, commitment, certificate, or endorsement;

(4) Errors in surveys provided by registered Iowa land surveyors that the participant relies upon in giving survey coverage or issuing an endorsement or endorsements; or

(5) Underwriting determinations or title risks approved by the division prior to issuance of the abstract of title, opinion, commitment, certificate, or endorsement.

c. The participant shall reimburse the division for a claim loss when the division determines, in accordance with 9.13(2)"d," that the participant is liable and when the claim loss arises from one or more of the following:

(1) Errors by the participant in the title search and report of information in the public record;

(2) Reliance by the participant upon sources of title searches and other title information that had not been approved by the division at the time of the reliance;

(3) Errors made by the participant in examining the title information provided in an abstract of title, survey, affidavit, or other source of title information;

(4) Errors made by the participant in the preparation or review of an abstract of title, opinion, commitment or certificate;

(5) Knowing issuance of an abstract of title, opinion, commitment or certificate by the participant upon a defective title; or

(6) Failure of the participant to follow these rules, the division's manuals, guides, procedures, or any other written or oral instructions or requirements given by the division with respect to any other matters not included within 9.13(2)"c."

d. Unless another rule, the Code of Iowa, a procedure, or a guideline provides for a different standard of liability or other rule for determining whether the participant shall be liable for a claim loss, the division shall apply the following standards:

(1) In the event that a claim loss occurs for which the division may seek recovery from the participant under 9.13(2)"c"(1), the division may demand reimbursement from the participant if the participant was grossly negligent in conducting the title search. Gross negligence includes the failure to make a search or the use of inadequate search procedures. Gross negligence under the preceding sentence includes but is not limited to failure to search certain indices, failure to search all names of parties with an interest in the real estate, or failure to search in all public offices required by the division search procedures or procedures used by prudent title searchers if the division has not established specific search procedures. In making its determination whether to seek recovery, the division may consider the complexity of the public record, the reliance of the participant upon division-approved search procedures, the training and experience of the person who made the error, and the existence or nonexistence of previous search errors by the participant.

(2) In the event that a claim loss occurs for which the division may seek recovery from the participant under 9.13(2)"c"(2), the division may demand reimbursement from the participant if the participant relied upon sources of title searches or other title information that had not been approved by the division at the time of the reliance.

(3) In the event that a claim loss occurs for which the division may seek recovery from the participant under 9.13(2)"c"(3), the division may demand reimbursement from the participant if the participant negligently examined the title information used in making a title determination, failed to raise an appropriate exception, waived an exception, or endorsed a title commitment or certificate. The division may make full review of local county abstracting standards and bar title rules as a guide to determine whether the participant has failed to meet the standard of skill and competence of an abstractor who prepares an abstract of title or a lawyer who examines titles in the community where the claim arose.

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The division may also consider whether the participant followed these rules, the division's manuals, guides, procedures, or any other written or oral instructions or requirements given by the division in examining the title. In addition, the division may seek input from other participants in the community in which the claim arose as to the standard of care of an abstractor who prepares an abstract of title or of a lawyer who examines titles in that community.

(4) In the event that a claim loss occurs for which the division may seek recovery from the participant under 9.13(2)“c”(4), the division may demand reimbursement from the participant if the participant negligently prepared and reviewed an abstract of title, opinion, commitment or certificate.

(5) In the event that a claim loss occurs for which the division may seek recovery from the participant under 9.13(2)“c”(5), the division may demand reimbursement from the participant if the issuance of the abstract of title, opinion, commitment or certificate constituted fraud, concealment or dishonesty, or if the issuance of the abstract of title, opinion, commitment or certificate was based upon an underwriting decision on an unusual risk that was made without contacting the division for approval.

(6) In the event that a claim loss occurs for which the division may seek recovery from the participant under 9.13(2)“c”(6), the division may demand reimbursement from the participant if the participant failed to follow these rules, the division's manuals, guides, procedures, or any other written or oral instructions or requirements given by the division with respect to the matter causing the claim loss.

(7) In the event the division seeks reimbursement from a participant, the division shall state the basis of the reimbursement as indicated in 9.13(2)“c” and 9.13(2)“d”(1) to (6).

e. The division board may, from time to time by resolution, establish levels of authority, including dollar amounts, for the board, the director and division staff for the settlement of claims made under the title guaranty certificates.

265—9.14(16) Rules of construction. In the construction of these rules, the following rules shall be observed, unless either the rules of the Iowa Code, Chapter 4, Construction of Statutes, or the following rules are inconsistent with the manifest intent or the context of the rule:

The word “shall” means mandatory and not permissive and the word “may” means permissive and not mandatory.

The word “closing” includes, but is not limited to, the recording of a deed executed and delivered in lieu of a mortgage foreclosure or pursuant to a mortgage foreclosure proceeding and also includes the entry into a binding agreement and transfer of possession by a seller to a buyer on a contract sale of land.

Nothing contained in these rules shall be construed to require a participating attorney to disclose privileged information of a client to the division or to any other party.

Any rule that provides a specific remedy or sanction for violation of the rule shall not be construed as limiting the ability of the division to pursue and enforce other penalties or sanctions under these rules, or otherwise, against the participating abstractor, participating attorney or other person responsible or liable, either separately, concurrently, cumulatively, or in any combination, at the sole discretion of the division.

The failure of the division to enforce a right or remedy under these rules, a statute, or the common law shall not be construed as a waiver of such right or remedy either in the specific instance or in any other instance.

265—9.15(16) Implementation. The provisions for abstracting requirements in the event of refinancing a mortgage or granting a second mortgage set out in subrule 9.6(4), first unnumbered paragraph, shall be implemented upon the issuance of a manual, instruction or guide by the division board.

265—9.16 through 9.19 Reserved.

ARC 3321B**PAROLE BOARD[205]****Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code sections 904A.4(2) and 906.3, the Board of Parole hereby gives Notice of Intended Action to rescind Chapters 1 to 15 and adopt new Chapters 1 to 16, Iowa Administrative Code.

Since the Board's present rules became effective on or about July 7, 1999, there have been substantial changes in the Iowa Code sections which the rules are intended to implement, as well as in Board policy and procedure. These changes have necessitated a redrafting of the Board's administrative rules. A synopsis of the rules is as follows:

Chapter 1 defines the organization, administration, and duties of the Board of Parole.

Chapter 2 provides the general rule-making procedures of the Board of Parole.

Chapter 3 provides the manner in which the public may petition for rule making.

Chapter 4 provides the manner in which the public may request a declaratory ruling.

Chapter 5 provides information regarding the Iowa Fair Information Practices Act.

Chapter 6 defines public records and communications with the Board of Parole.

Chapter 7 provides procedures relating to victim notification.

Chapter 8 provides procedures relating to consideration for parole and work release.

Chapter 9 is reserved.

Chapter 10 provides the general parole and work release supervision procedures of the Board of Parole.

Chapter 11 provides the general parole revocation procedures of the Board of Parole.

Chapter 12 is reserved.

Chapter 13 provides the general parole discharge procedures of the Board of Parole.

Chapter 14 provides procedures relating to executive clemency.

Chapter 15 provides the general appeal procedures of the Board of Parole.

Chapter 16 provides the waiver procedures of the Board of Parole.

Any interested person may submit written comments on or before May 18, 2004, addressed to Richard S. Bordwell, Vice Chair, Board of Parole, Holmes Murphy Building, 420 Watson Powell Jr. Way, Des Moines, Iowa 50309.

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A public hearing will be held at 10 a.m. on May 18, 2004, at the Board's offices at the Holmes Murphy Building, 420 Watson Powell Jr. Way, Des Moines, Iowa 50309.

These rules were approved by the Iowa Board of Parole on April 8, 2004. It is the Board's intention to make these rules effective on or about July 28, 2004.

These rules are intended to implement Iowa Code chapters 17A, 21, 22, 217, 902, 904A, 906, 908, 914, and 915.

The following amendment is proposed.

Rescind 205—Chapters 1 to 15 and adopt the following new chapters in lieu thereof:

CHAPTER 1

ORGANIZATION AND GENERAL ADMINISTRATION

205—1.1(904A) Board description.

1.1(1) The board of parole is established by Iowa Code chapter 904A and consists of five members, including a chairperson.

1.1(2) Board members are appointed by the governor for staggered terms of four years and are subject to confirmation by the senate.

1.1(3) The board is responsible directly to the governor and is attached to the department of corrections for the purpose of receiving routine administrative and support services.

1.1(4) The board chairperson is appointed by the governor and serves at the pleasure of the governor.

1.1(5) Vacancies in the board are filled in the same manner as regular appointments. Appointees who fill vacancies serve for the balance of the term.

1.1(6) As used in the rules of the Iowa board of parole, the term "board" shall mean the Iowa board of parole.

205—1.2(904A) Board responsibilities. The statutory responsibilities of the board are:

1.2(1) Reviewing and interviewing inmates for parole or work release, and granting parole or work release.

1.2(2) Interviewing inmates according to board of parole administrative rules.

1.2(3) Gathering and reviewing information regarding new parole and work release programs being instituted or considered nationwide, and determining which programs may be useful to Iowa. Reviewing the current parole and work release programs and procedures used in Iowa on an annual basis.

1.2(4) Increasing the utilization of data processing and computerization to assist in the orderly conduct of the parole and work release system.

1.2(5) Conducting such studies of the parole and work release system as the governor and general assembly shall request.

1.2(6) Providing, to public and private entities, technical assistance and counseling related to the board's purposes.

1.2(7) Reviewing and making recommendations to the governor regarding all applications for reprieve, pardon, commutation of sentence, remission of a fine or forfeiture, and restoration of citizenship rights.

1.2(8) Maintaining a risk assessment program which shall provide risk analysis for the board.

205—1.3(904A) Business location and hours. The board's business office address is Holmes Murphy Building, 420 Watson Powell Jr. Way, Des Moines, Iowa 50309, telephone (515)242-5757. Business hours are 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

205—1.4(904A) Board meetings.

1.4(1) The board may conduct the following meetings:

a. Business meeting. The board may meet each month to consider rules, procedure and other matters.

b. Public hearing. The board may conduct a public hearing to solicit input and comment on parole and work release procedures.

c. Board session. The board shall be in session each month at any location designated by the chairperson. A board session may include:

- (1) Parole and work release case reviews;
- (2) Parole and work release interviews;
- (3) Parole rescission hearings;
- (4) Parole discharge reviews;
- (5) Executive clemency reviews.

1.4(2) Quorum.

a. A majority of the members of the board constitutes a quorum except as provided herein.

b. The chairperson shall designate panels composed of at least three board members to conduct board sessions except as provided herein.

1.4(3) Majority vote. All questions shall be decided by a majority vote of the members except as provided herein.

1.4(4) Parliamentary authority. Robert's Rules of Order, current edition, shall govern the conduct of all business meetings of the board except as provided herein.

1.4(5) Minutes. The board shall keep copies of the minutes of board meetings on file at the business office. The list of individuals considered by the board for action shall constitute the minutes of a board session.

1.4(6) Public notice and agenda. The board shall establish the date, time, and location of all meetings. The board shall give public notice of all meetings pursuant to Iowa Code chapter 21. The board shall mail copies of, or provide by electronic means, notices of public meetings and tentative agenda to news media that have so requested. When it is determined that an emergency meeting is required, the board shall notify the news media as soon as the need for an emergency meeting has been decided. The nature of the emergency shall be stated in the minutes.

1.4(7) Public access to meetings. Members of the public have access to board meetings as provided in Iowa Code chapter 21. Persons wishing to appear before the board shall submit their requests to the business office not less than three days prior to the business meeting. Members of the public wishing to attend board meetings conducted in department of corrections penal institutions should consult, in advance, department of corrections administrative rules relating to visitation and public access.

1.4(8) Electronic meetings. The board may conduct a meeting by electronic means as provided in Iowa Code section 21.8.

These rules are intended to implement Iowa Code chapter 904A.

CHAPTER 2

AGENCY PROCEDURE FOR RULE MAKING

The board of parole hereby adopts the agency procedure for rule making segment of the Uniform Rules on Agency Procedure which are printed in the first volume of the Iowa Administrative Code with the following amendments:

2.3(2) Anticipated rule making. In lieu of the words "(commission, board, council, director)", insert "board of parole".

2.5(1) Written comments. In lieu of the words "(identify office and address)", insert "Executive Director of the Board of Parole, Holmes Murphy Building, 420 Watson Powell Jr. Way, Des Moines, Iowa 50309".

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2.6(2) Mailing list. In lieu of the words “(designate office)”, insert “Board of Parole, Holmes Murphy Building, 420 Watson Powell Jr. Way, Des Moines, Iowa 50309”.

2.11(1) General. In lieu of the words “(specify the office and address)”, insert “the executive director of the board of parole”.

These rules are intended to implement Iowa Code chapter 17A.

CHAPTER 3

PETITIONS FOR RULE MAKING

The board of parole hereby adopts the petitions for rule making segment of the Uniform Rules on Agency Procedure which are printed in the first volume of the Iowa Administrative Code with the following amendments:

205—3.1(17A) Petition for rule making. In lieu of the words “(designate office)”, the text should read “Board of Parole, Holmes Murphy Building, 420 Watson Powell Jr. Way, Des Moines, Iowa 50309”.

In lieu of the words “(AGENCY NAME)”, the heading on the petition form should read “BEFORE THE BOARD OF PAROLE OF THE STATE OF IOWA”.

205—3.3(17A) Inquiries. In lieu of the words “(designate official by full title and address)”, the text should read “the Executive Director of the Board of Parole, Holmes Murphy Building, 420 Watson Powell Jr. Way, Des Moines, Iowa 50309”.

These rules are intended to implement Iowa Code chapter 17A.

CHAPTER 4

DECLARATORY ORDERS

The board of parole hereby adopts the declaratory orders segment of the Uniform Rules on Agency Procedure which are printed in the first volume of the Iowa Administrative Code with the following amendments:

205—4.1(17A) Petition for declaratory order. In lieu of the words “(designate agency)”, the text should read “board of parole”. In lieu of the words “(designate office)”, the text should read “Board of Parole, Holmes Murphy Building, 420 Watson Powell Jr. Way, Des Moines, Iowa 50309”.

In lieu of the words “(AGENCY NAME)”, the heading on the petition form should read “BEFORE THE BOARD OF PAROLE OF THE STATE OF IOWA”.

205—4.2(17A) Notice of petition. In lieu of the words “(designate agency)”, the text should read “board of parole”.

205—4.3(17A) Intervention.

4.3(1) In lieu of the words “____ days”, the text should read “20 days”.

4.3(2) In lieu of the words “(designate agency)”, the text should read “the board of parole”.

4.3(3) In lieu of the words “(designate office)”, the text should read “Board of Parole, Holmes Murphy Building, 420 Watson Powell Jr. Way, Des Moines, Iowa 50309”. In lieu of the words “(designate agency)”, the text should read “board of parole”. In lieu of the words “(AGENCY NAME)”, the text should read “BEFORE THE BOARD OF PAROLE OF THE STATE OF IOWA”.

205—4.4(17A) Briefs. In lieu of the words “(designate agency)”, the text should read “board of parole”.

205—4.5(17A) Inquiries. In lieu of the words “(designate official by full title and address)”, the text should read “the Executive Director of the Board of Parole, Holmes Murphy

Building, 420 Watson Powell Jr. Way, Des Moines, Iowa 50309”.

205—4.6(17A) Service and filing of petitions and other papers.

4.6(2) Filing—when required. In lieu of the words “(specify office and address)”, the text should read “Board of Parole, Holmes Murphy Building, 420 Watson Powell Jr. Way, Des Moines, Iowa 50309”. In lieu of the words “(agency name)”, the text should read “board of parole”.

4.6(3) Method of service, time of filing, and proof of mailing. Method of service, time of filing and proof of mailing shall be as provided in the contested cases segment of the Uniform Rules on Agency Procedure.

205—4.7(17A) Consideration. In lieu of the words “(designate agency)”, the text should read “board of parole”.

205—4.8(17A) Action on petition.

4.8(1) In lieu of the words “(designate agency head)”, the text should read “chairperson of the board of parole”.

4.8(2) The date of issuance of an order or of a refusal to issue an order is as defined in the contested cases segment of the Uniform Rules on Agency Procedure.

205—4.9(17A) Refusal to issue order. In lieu of the words “(designate agency)”, the text should read “board of parole”.

205—4.12(17A) Effect of a declaratory order. In lieu of the words “(designate agency)”, the text should read “board of parole”.

These rules are intended to implement Iowa Code chapter 17A.

CHAPTER 5

FAIR INFORMATION PRACTICES

The board of parole hereby adopts, with the following exceptions and amendments, the Uniform Rules on Agency Procedure relating to public records and fair information practices which are printed in the first volume of the Iowa Administrative Code.

205—5.1(17A,22) Definitions. As used in this chapter:

“Agency” means the board of parole.

“Confidential records” means records, as defined under Iowa Code sections 22.7, 22.8, 904.601, 904.602 and 904.603, which are not disclosed to members of the public except by court order. This includes records which the board is prohibited by law from making available for inspection by members of the public and those exempt records which the board has determined not to disclose to members of the public.

“Open records” means those records which are not authorized or required to be kept confidential under Iowa Code section 22.7, 22.8, 904.601, or 904.602 or any other provision of the law.

205—5.2(17A,22) Statement of policy. The purpose of this chapter is to facilitate broad public access to open records. It also seeks to facilitate sound agency determinations with respect to the handling of confidential records and the implementation of the fair information practices Act. This agency is committed to the policies set forth in Iowa Code chapter 22. Agency staff shall cooperate with members of the public in implementing the provisions of that chapter.

205—5.3(17A,22) Requests for access to records.

5.3(1) Location of record. A request for access to a record should be directed to the office where the record is kept. Records of current inmates, work releasees and parolees are

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maintained in the office of the Board of Parole, Holmes Murphy Building, 420 Watson Powell Jr. Way, Des Moines, Iowa 50309, telephone (515)242-5757.

5.3(2) Office hours. Open records shall be made available during all customary office hours, which are 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

5.3(3) Request for access. Requests for access to records may be made in writing, in person, or by telephone if the request is for open record information. Requests shall identify the particular records sought by name or description in order to facilitate the location of the record. Mail requests shall include the name, address and telephone number of the person requesting the information. A person shall not be required to give a reason for requesting an open record.

5.3(4) Response to requests. The custodian is authorized to grant or deny access to the record according to the provisions of Iowa Code chapter 22, Iowa Code sections 904.601, 904.602, and 904.603 and this chapter. The decision to grant or deny access may be delegated to one or more designated employees. Unless the size or nature of the request requires time for compliance, the agency shall comply with the request as soon as practicable. However, access to such a record may be delayed for one of the purposes authorized by Iowa Code section 22.8(4) or 22.10(4) or for good cause. The agency shall promptly inform the requester of the reason for the delay. A request to review a confidential record shall be in writing and shall enumerate the specific grounds justifying access to the confidential record and shall provide any proof necessary to establish relevant facts prior to receiving access to the record.

5.3(7) Fees.

c. Supervisory fee. An hourly fee may be charged for actual agency expenses in supervising the examination and copying of requested records when the supervision time required is in excess of five minutes. That hourly fee shall not be in excess of the hourly wage of an agency employee who ordinarily would be appropriate and suitable to perform this supervisory function.

205—5.5(17A,22) Requests for treatment of a record as a confidential record and its withholding from examination.

5.5(5) Request granted or deferred. If a request for confidential record treatment is granted, or if action on such a request is deferred, a copy of the record from which the matter in question has been deleted and a copy of the decision to grant the request or to defer action upon the request will be placed in the agency's public file in lieu of the original record. If the agency subsequently receives a request for access to the original record, the agency will make reasonable and timely efforts to notify any person who has filed a request for its treatment as a confidential record.

205—5.6(17A,22) Procedure by which additions, dissents or objections may be entered into certain records. Except as otherwise provided by law, a person may file a request with the custodian to review, and to have a written statement of additions, dissents, or objections entered into, a record containing personally identifiable information pertaining to that person. However, this does not authorize a person who is the subject of such a record to alter the original copy of that record or to expand the official record of any agency proceeding. Requester shall send the request to review such a record or the written statement of additions, dissents, or objections to the custodian or to the Board of Parole, Holmes Murphy Building, 420 Watson Powell Jr. Way, Des Moines, Iowa 50309. The request to review such a record or the written statement of

such a record of additions, dissents, or objections must be dated and signed by the requester, and shall include the current address and telephone number of the requester or the requester's representative.

205—5.7(17A,22) Consensual disclosure of confidential records.

5.7(1) Consent to disclose by a subject individual. To the extent allowed by law, the subject may consent in writing to agency disclosure of confidential records as provided in rule 5.4(17A,22).

5.7(2) Complaints to public officials. A letter from a subject of a confidential record to a public official which seeks the official's intervention on behalf of the subject in a matter that involves the agency may, to the extent permitted by law, be treated as an authorization to release sufficient information about the subject to the official to resolve the matter.

5.7(3) Obtaining information from a third party. The board is required to obtain information to assist in making decisions regarding classification, programming, security and administrative management. Requests to third parties for this information may involve the release of confidential information about individuals. Except as provided by law, the board may make these requests only when the individual has authorized the release.

205—5.9(17A,22) Routine use. To the extent allowed by law, the following uses are considered routine uses of all agency records:

5.9(1) Disclosure to those officers, employees, and agents of the agency who have a need for the record in the performance of their duties. The custodian of the record may, upon request of any officer or employee, or on the custodian's own initiative, determine what constitutes legitimate need to use confidential records.

5.9(2) Disclosure of information indicating an apparent violation of the law to appropriate law enforcement authorities for investigation and possible criminal prosecution, civil court action, or regulatory order.

5.9(3) Disclosure to the department of inspections and appeals for matters in which it is performing services or functions on behalf of the agency.

5.9(4) Transfers of information within the agency, to other state agencies, or to units of local government as appropriate to administer the program for which the information is collected.

5.9(5) Information released to staff of federal and state entities for audit purposes or for purposes of determining whether the agency is operating a program lawfully.

5.9(6) Any disclosure specifically authorized by the statute under which the record was collected or maintained.

205—5.10(17A,22) Disclosures without the consent of the subject.

5.10(1) Open records are routinely disclosed without the consent of the subject.

5.10(2) To the extent allowed by law, disclosure of confidential records may occur without the consent of the subject. Following are instances when disclosure, if lawful, will generally occur without notice to the subject:

a. For a routine use as permitted by law and in the particular record system.

b. To a recipient who has provided the agency with advance written assurance that the record will be used solely as a statistical research or reporting record, provided that the record is transferred in a form that does not identify the subject.

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c. To another government agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if the activity is authorized by law, and if the head of such government agency or instrumentality has submitted a written request to the agency specifying the record desired and the law enforcement activity for which the record is sought.

d. To an individual pursuant to a showing of compelling circumstances affecting the health or safety of any individual if a notice of the disclosure is transmitted to the last-known address of the subject.

e. To the legislative services agency under Iowa Code Supplement section 2A.3.

f. Disclosures in the course of employee disciplinary proceedings.

g. In response to a court order or subpoena.

205—5.11(17A,22) Release to subject.

5.11(1) The subject of a confidential record may file a written request to review confidential records about that person. However, the board need not release the following records to the subject:

a. The identity of a person providing information to the agency need not be disclosed directly or indirectly to the subject of the information when the information is authorized to be held confidential pursuant to Iowa Code sections 22.7(18) and 904.602.

b. Records need not be disclosed to the subject when they are the work product of an attorney or are otherwise privileged.

c. Peace officers' investigative reports may be withheld from the subject, except as required by the Iowa Code.

d. As otherwise authorized by law.

5.11(2) When a record has multiple subjects with interest in the confidentiality of the record, the board may take reasonable steps to protect confidential information relating to another subject.

205—5.12(17A,22) Availability of records.

5.12(1) Open records. Board records are open for public inspection and copying unless otherwise prohibited by current rule or law.

5.12(2) Confidential records. The following records may be kept confidential. Records are listed by category, according to the legal basis for withholding them from public inspection.

a. Sealed bids received prior to the time set for public opening of bids; (Iowa Code section 72.3)

b. Tax records made available to the agency; (Iowa Code sections 422.17, 422.20)

c. Minutes of closed meetings of a governmental body; (Iowa Code section 21.5(4))

d. Identifying details in final orders, decisions and opinions to the extent required to prevent a clearly unwarranted invasion of personal privacy or trade secrets under Iowa Code section 17A.3(1)(d);

e. Those portions of agency staff manuals, instructions, or other statements issued which set forth criteria or guidelines to be used by agency staff in auditing, in making inspections, in settling commercial disputes or negotiating commercial arrangements, or in the selection or handling of cases, such as operational tactics or allowable tolerance or criteria for the defense, prosecution or settlement of cases, when disclosure of these statements would:

(1) Enable law violators to avoid detection;

(2) Facilitate disregard of requirements imposed by law;

or

(3) Give a clearly improper advantage to persons who are in an adverse position to the agency; (Iowa Code section 22.7)

f. Records which constitute attorney work product, or attorney-client communications, or which are otherwise privileged. Attorney work product is confidential under Iowa Code sections 22.7(4), 622.10 and 622.11, Iowa Rule of Civil Procedure 1.503(3), Federal Rule of Civil Procedure 26(b)(3), and case law. Attorney-client communications are confidential under Iowa Code sections 622.10 and 622.11, the rules of evidence, the Code of Professional Responsibility and case law;

g. Other records made confidential by law.

205—5.13(17A,22) Personally identifiable information.

5.13(1) This rule describes the nature and extent of personally identifiable information which is collected, maintained and retrieved by the agency by personal identifier in record systems as defined in this rule. For each record system, this rule:

a. Describes the legal authority for the collection of that information and the means of storage of that information; and

b. Indicates whether a data processing system matches, collates, or permits the comparison of personally identifiable information in one record system with personally identifiable information in another record system.

5.13(2) Litigation files. These files or records contain information regarding litigation or anticipated litigation, which includes judicial and administrative proceedings. The records include briefs, depositions, docket sheets, documents, correspondence, attorney notes, memoranda, research materials, witness information, investigation materials, information compiled under the direction of the attorney and case management records. The files contain materials which are confidential as attorney work product and attorney-client communications. Some materials are confidential under other applicable provisions of law or because of a court order. Persons wishing copies of pleadings and other documents filed in litigation should obtain these from the clerk of the appropriate court which maintains the official copy.

5.13(3) Personnel files. The agency maintains files containing information about employees, families and dependents, and applicants for positions with the agency. The files include payroll records, biographical information, medical information relating to disability, performance reviews and evaluations, disciplinary information, and tax withholding information concerning the employer-employee relationship. Some of this information is confidential under Iowa Code section 22.7(11).

205—5.14(17A,22) Other groups of records available for public inspection—policies and procedures (excluding security), meeting minutes.

This rule describes groups of records maintained by the board other than record systems as previously defined. These records are routinely available to the public. However, the board's file of these records may contain confidential information, as discussed in rule 5.12(17A,22). The following records are stored both as hard copy and in automated data processing systems unless otherwise noted.

5.14(1) Rule-making records. Rule-making records may contain information about individuals making written or oral comments on proposed rules. This information is collected pursuant to Iowa Code section 17A.4.

5.14(2) Board meeting records. Agendas, minutes and materials presented to the board are available from the office of the director, except those records concerning closed ses-

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sions which are exempt from disclosure under Iowa Code section 21.5(4) or which are otherwise confidential by law. Board meeting records contain information about people who participate in meetings. The information is collected pursuant to Iowa Code section 21.3. This information is not retrieved by individual identifier.

5.14(3) Publications. News releases, annual reports, project reports, board newsletters, and related documents are available from the board office. Board news releases, project reports, and newsletters may contain information about individuals, including board staff or members of the board councils or committees. This information is not retrieved by individual identifier.

5.14(4) Statistical reports. Periodic reports of the board for various board programs are available from the board office. Statistical reports do not contain personally identifiable information.

5.14(5) Grants. Records on persons receiving grants for various projects or programs are available through the office of the executive director. These records may contain information about employees or a grantee. This information is not retrieved by individual identifier and is not stored on an automated data processing system. The information is collected under the authority of Iowa Code chapter 904.

5.14(6) Published materials. The board uses many legal and technical publications in its work. The public may inspect these publications upon request. Some of these materials may be protected by copyright law. These records are hard copy only.

5.14(7) Policy manuals. The board employees' manual, containing procedures describing the board's regulations and practices, is available. Subscriptions to all or part of the employees' manual are available at the cost of production and handling. Requests for subscription information should be addressed to the board office. Policy manuals do not contain information about individuals.

5.14(8) Other records. All other records that are not exempt from disclosure by law are available from the board office.

205—5.15(17A,22) Applicability. This chapter does not:

5.15(1) Require the agency to index or retrieve records which contain information about an individual by that person's name or other personal identifier.

5.15(2) Make available to the general public records which would otherwise not be available under the public records law, Iowa Code chapter 22.

5.15(3) Govern the maintenance or disclosure of, notification of, or access to records in the possession of the agency which are governed by the regulations of another agency.

5.15(4) Apply to grantees, including local governments or subdivisions thereof, administering state-funded programs, unless otherwise provided by law or agreement.

5.15(5) Make available records compiled by the agency in reasonable anticipation of court litigation or formal administrative proceedings. The availability of such records to the general public or to any subject individual or party to such litigation or proceedings shall be governed by applicable legal and constitutional principles, rules of discovery, evidentiary privileges and applicable regulations of the agency.

These rules are intended to implement Iowa Code section 22.11 and chapter 17A.

CHAPTER 6

PUBLIC COMMUNICATIONS AND RECORDS

205—6.1(22) General. The public may obtain information or make submissions to the board through the business office.

205—6.2(22) Communications from persons other than victims.

6.2(1) Written communication preferred. The board requests that all communications by a person other than a victim, as defined in rule 205—7.1(915), concerning an inmate, parolee, or work releasee be in writing so that the communication may readily be made a permanent part of the case file. Oral communications concerning an inmate, parolee, or work releasee by a person other than a victim will be heard only with the consent of the board.

6.2(2) Disclosure to inmate. The board shall place a written communication concerning an inmate, parolee, or work releasee in the case file. The board shall inform an inmate, parolee, or work releasee when a communication adverse to the inmate, parolee, or work releasee will be considered in making a parole or work release decision and shall disclose to the inmate, parolee, or work releasee the substance of any opinion regarding the inmate's, parolee's or work releasee's status unless withholding the information is requested by the person providing the statement or oral communication and the board determines that the release of the information would endanger the public safety.

205—6.3(22) Examination of board records.

6.3(1) General. The public may examine and copy board public records pursuant to Iowa Code chapter 22 at the board's business office. An individual wishing to examine or copy a record must schedule an appointment with the board's business office a minimum of three working days prior to the date on which the individual will review the information in question. When making the appointment, the requesting party shall specifically indicate the information desired. Complete inmate files will not be released except by court order. When photocopies of documents or copies of audiotapes or videotapes are provided, the board may require the requester to pay the cost of the copies plus a reasonable charge for copying. These charges are to be determined by the lawful custodian. The board may refer anyone requesting information which has been generated by a source outside the board to the agency or individual which generated the information.

6.3(2) Lawful custodian. The board shall designate the chairperson or the chairperson's designee as the lawful custodian of the records who shall be responsible for implementing the board's rules regarding disclosure of public records and coordination of staff in this regard and generally ensuring compliance by the staff with public records disclosure requirements.

205—6.4(904) Disclosure of information regarding inmates and parolees.

6.4(1) Public information. The following information regarding individuals receiving services from the department of corrections or a district department is public information and may be disclosed by the board to anyone who requests the information, except that information shall be limited to the offense for which an individual was last convicted:

- a. Name.
- b. Age and date of birth.
- c. Sex.
- d. Status (for example, inmate, parolee, or probationer).
- e. Location, except home street address.
- f. Duration of supervision.
- g. Offense or offenses for which the individual was placed under supervision.
- h. County of commitment.
- i. Arrest and detention orders.

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- j. Physical description.
- k. Type of services received, except medical, psychiatric, psychological, substance abuse, gambling and sex offender treatment information.

l. Disciplinary reports and decisions which have been referred to the county attorney or prosecutor for prosecution, and the following information from all other disciplinary reports:

- (1) The name of the subject of the investigation.
- (2) The alleged infraction involved.
- (3) The finding of fact and the penalty, if any, imposed as a result of the infraction.

m. Inmate risk assessment score.

6.4(2) Confidential information regarding inmates and parolees. The following information regarding individuals receiving services from the department of corrections or a district department is confidential information and shall not be disclosed to the public:

- a. Home street address of the individual receiving services or of that individual's family.
- b. Department evaluations.
- c. Medical, psychiatric, psychological, substance abuse treatment, gambling and sex offender treatment information.
- d. Names of associates or accomplices.
- e. Name of employer.
- f. Social security number.
- g. Prior criminal history including information on offenses when no conviction occurred.
- h. Family and personal history.
- i. Financial information.
- j. Information from disciplinary reports and investigations other than that identified in subrule 6.4(1).
- k. Investigations by the department of corrections or other agencies which are contained in the individual's file.
- l. Department of corrections committee records containing confidential information.
- m. Presentence investigations as provided under Iowa Code chapter 901.
- n. Pretrial information that is not otherwise available in public court records or proceedings.
- o. Correspondence of a personal or confidential nature as determined by the board or the department directed to the board or the department of corrections from an individual's family, victims, or employers.
- p. Communications to the board by members of the public other than public officials to the extent that the board believes that those members of the public would be discouraged from making the communications if the communications were available for general public examination.
- q. Victim registrations pursuant to 205—Chapter 7. A record containing information which is both public and confidential which is reasonably segregable shall not be confidential after deletion of the confidential information.

6.4(3) The board may disclose confidential information described in subrule 6.4(2) as follows:

- a. The board may release statistical information which does not identify particular individuals.
- b. The board may disclose information to the department of corrections; district departments; public officials for use in connection with their duties relating to law enforcement, audits, and other purposes directly connected with the administration of their programs; and public and private agencies providing services to individuals. Those receiving information shall be subject to the same standards as the board in dissemination and redissemination of information.
- c. The board may disclose information when necessary for civil or criminal court proceedings pursuant to court or-

der. The board may seek to have the court limit disclosure of confidential information.

d. The board shall give a supervised individual or former supervised individual access to the individual's own records in the custody of the board, except for those records that could result in physical or psychological harm to the individual or others, and disciplinary reports. Upon written authorization by a supervised individual or former supervised individual, the board may release information to any party included in the written release. This information is restricted to that which the individual can obtain.

205—6.5(904A) Inmate requests regarding risk assessment score. An inmate may request information from the board of parole regarding the inmate's risk assessment score. However, because an inmate's risk assessment score will not change unless the inmate is released from and later returned to prison, the board shall not be required to respond to more than one request regarding the risk assessment score per commitment to prison from each inmate.

These rules are intended to implement Iowa Code chapter 22 and sections 904.601, 904.602, and 904A.4.

CHAPTER 7 VICTIM NOTIFICATION

205—7.1(915) Definitions.

"Notification" means mailing by regular mail or providing for hand delivery of appropriate information or papers. However, this notification procedure does not prohibit the board from also providing appropriate information to a registered victim by telephone.

"Parole interview" means an interview conducted by the board to consider an inmate's prospects for parole pursuant to Iowa Code section 906.5.

"Registered" means having provided the county attorney with the victim's written request for registration and current mailing address and telephone number, and having been approved by the county attorney.

"Victim" means a person who has suffered physical, emotional, or financial harm as the result of a public offense, other than a simple misdemeanor, committed in this state. The term also includes the immediate family members of a victim who died or was rendered incompetent as a result of the offense or who was under 18 years of age at the time of the offense.

"Violent crime" means a forcible felony, as defined in Iowa Code section 702.11, and includes any other felony or aggravated misdemeanor which involved the actual or threatened infliction of physical or emotional injury on one or more persons.

205—7.2(915) Victim registration. A victim may register by filing a written request-for-registration form with the county attorney. The county attorney shall notify the victim in writing and advise the victim of the victim's registration and rights. The county attorney shall provide the appropriate offices, agencies, and departments, including the board, with a registered victim list. The board shall determine if an individual will be accepted as a registered victim. This determination shall be based solely upon criteria set out in the Iowa Code. A registered victim is responsible for keeping the victim's address and telephone number current with the board in order to ensure timely notification.

205—7.3(915) Victim notification. The board shall notify a registered victim of a violent crime not less than 20 days prior to conducting a hearing at which the board will interview the

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inmate, and shall inform the victim that the victim may submit the victim's opinion concerning the release of the inmate in writing prior to the hearing, or may appear personally or by counsel at the hearing to express an opinion concerning the inmate's release.

205—7.4(915) Notification of decision. Whether or not the victim appears at the hearing or expresses an opinion concerning the offender's release on parole, the board shall notify the victim of the board's decision regarding release of the offender.

205—7.5(915) Written opinions concerning release. A registered victim may submit a written opinion concerning the release of the inmate at any time by mailing the opinion to the business office. The written opinion shall be made a permanent part of the inmate's file and shall be reviewed when the board considers the inmate's prospects for parole.

205—7.6(915) Appearances at parole interviews.

7.6(1) A registered victim of a violent crime may appear personally or by counsel at a parole interview to express an opinion concerning the release of the inmate.

7.6(2) If a registered victim of a violent crime intends to appear at a parole interview, the victim must comply with the rules of the department of corrections that require a visitor to a state institution to give prior notice of the intended visit and to receive approval for the visit.

7.6(3) A registered victim of a violent crime, or victim's counsel, shall appear at the institution at the time set forth in the notice of parole interview. The victim or counsel shall inform institutional personnel of the purpose of the appearance. Institutional personnel shall coordinate the appearance of the victim or victim's counsel with the board. At the appearance, the board shall permit the victim or victim's counsel to express an opinion concerning the release of the inmate.

205—7.7(915) Disclosure of victim information. Information regarding a registered victim, as well as the existence of a registered victim in a particular case, is confidential and shall not be disclosed to the public. A victim's registration, and the substance of any opinion submitted by the victim regarding the inmate's release, may be disclosed to the inmate at the discretion of the board.

These rules are intended to implement Iowa Code chapter 915.

CHAPTER 8

PAROLE AND WORK RELEASE CONSIDERATIONS

205—8.1(906) Purpose of parole and work release considerations. The board shall determine whether there is reasonable probability that an inmate committed to the custody of the department of corrections who is eligible for parole or work release can be released without detriment to the community or the inmate. The board shall consider the best interests of society and shall not grant parole or work release as an award of clemency.

205—8.2(906) Parole and work release eligibility.

8.2(1) Mandatory sentences. The board shall not grant parole to an inmate serving a mandatory minimum sentence. The board shall not grant work release to an inmate serving a mandatory minimum sentence unless the inmate is within six months of completing the mandatory minimum portion of the sentence. A parole or work release granted contrary to this rule shall be rescinded. Mandatory sentences are as follows:

a. A life sentence imposed for conviction of a Class "A" felony pursuant to Iowa Code section 902.1;

b. A mandatory minimum sentence imposed for use of a firearm pursuant to Iowa Code section 902.7;

c. A mandatory minimum sentence imposed for violation of uniform controlled substance provisions pursuant to Iowa Code section 124.406 or 124.413;

d. A mandatory minimum sentence imposed for being an habitual offender pursuant to Iowa Code section 902.8;

e. A mandatory minimum sentence imposed for a prior forcible felony pursuant to Iowa Code section 902.11.

8.2(2) Parole and work release while on patient status. Generally, the board will not grant parole or work release to an inmate on patient status.

8.2(3) Parole to detainer. The board may grant parole to an inmate against whom a detainer has been placed by another state. Generally, the board will not parole an inmate to a detainer that is solely for prosecution.

8.2(4) Parole to other states. The board may grant parole to another state pursuant to the provisions of the interstate parole and probation compact set forth in Iowa Code chapter 907A.

205—8.3 Reserved.

205—8.4(906) Prior forcible felony mandatory minimum sentence. The board shall deny parole or work release to an inmate who is serving a mandatory minimum sentence pursuant to Iowa Code section 902.11.

205—8.5(904A) Risk assessment. The board shall assess the risk of an inmate committed to the custody of the department of corrections. The board shall utilize a risk assessment instrument approved by the board by resolution.

205—8.6(906) Parole and work release considerations.

8.6(1) Case reviews. The board may review the records of an inmate committed to the custody of the department of corrections and consider the inmate's prospects for parole or work release at any time. The board shall notify an inmate only if the inmate is granted parole or work release, except as provided in 8.16(3).

8.6(2) Interviews. The board may interview an inmate committed to the custody of the department of corrections at any time.

8.6(3) The board shall review the status of each inmate as directed by the Iowa Code, and shall provide the inmate with notice of its parole or work release decision. After an inmate has been granted work release, the board shall review the inmate's status at least annually from the date of the decision to grant work release.

8.6(4) Class "A" felons, and Class "B" felons serving a sentence of more than 25 years, are excepted from the annual review requirement of 8.6(3).

8.6(5) Inmates serving a mandatory minimum sentence are excepted from the annual review requirements of 8.6(3) until such time as the mandatory minimum has expired.

8.6(6) Department initiated review. The department of corrections may recommend an inmate for parole or work release consideration at any time. The board shall discuss such a recommendation with department staff during the next regularly scheduled board session involving the institution where the inmate in question is incarcerated. The board may, at its discretion, interview the inmate prior to acting upon the recommendation of the department of corrections staff.

205—8.7(906) Parole and work release information. The board shall notify the department of corrections or a district department when an inmate is to be considered for parole or

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work release. The receipt of notice by the department of corrections or the district department shall constitute a request for updated information on the inmate. The board shall request information required for parole or work release decision making. The department of corrections or the district department shall furnish updated information to the board.

205—8.8(906) Interview notice. The board or the board's designee shall notify an inmate to be interviewed for parole or work release consideration of the time and purpose of the interview. Notice given to the department of corrections shall be considered notice to the inmate. Not less than 20 days prior to the interview, the board shall also notify the department of corrections of the scheduling of the interview, and the department shall make the inmate available to the board at the inmate's institutional residence as scheduled in the notice. However, if health, safety, or security conditions require moving the inmate to another institution or facility prior to the scheduled interview, the department of corrections shall so notify the board.

205—8.9(906) Continuance. The board may reschedule or continue a parole or work release interview upon its own motion or upon a showing of good cause, as determined by the board.

205—8.10(906) Factors considered in parole and work release decisions.

8.10(1) The board may consider the following factors and others deemed relevant to the parole and work release decisions:

- a. Previous criminal record;
- b. Nature and circumstances of the offense;
- c. Recidivism record;
- d. Convictions or behavior indicating a propensity for violence;
- e. Participation in institutional programs, including academic and vocational training;
- f. Psychiatric and psychological evaluations;
- g. Length of time served;
- h. Evidence of serious or habitual institutional misconduct;
- i. Success or failure while on probation;
- j. Prior parole or work release history;
- k. Prior refusal to accept parole or work release;
- l. History of drug or alcohol use;
- m. A parole plan formulated by the inmate;
- n. General attitude and behavior while incarcerated;
- o. Risk assessment.

8.10(2) Psychological and psychiatric evaluations. The board may request a complete psychiatric or psychological evaluation of an inmate whenever, in the opinion of the board, it would be beneficial to the board's decision. The board shall routinely request an evaluation of an inmate convicted of a crime involving sexual abuse or personal violence, or of an inmate who has committed assaults or violent acts while incarcerated.

205—8.11(906) Information disclosure to inmate. The board shall normally consider only information that has been reviewed by the inmate, except when the board deems such review not feasible. The information shall be considered only if the following safeguards are followed:

8.11(1) The staff of the department of corrections shall discuss the information with the inmate and disclose to the inmate any factual allegations if the disclosure can be done in a manner that protects confidential sources.

Factual allegations shall include but not be limited to:

- a. Any statements attributed to the inmate;
- b. Any allegations of criminal or antisocial behavior with or without court conviction from within or without the institution;
- c. Any allegations of threats made by the inmate;
- d. Any allegations of drug addiction or alcoholism;
- e. Any allegations regarding family history, employment or education;
- f. Disciplinary record at the institution.

8.11(2) If any information from outside institutions under the supervision of the department of corrections is to be considered by the board, and it is necessary to protect the source, the inmate shall be informed of at least the following:

- a. The general substance of the information;
- b. The number of communications;
- c. The type of communications.

The inmate shall be given the opportunity to respond to information.

8.11(3) The inmate's reports from institutions under the supervision of the department of corrections, including reception reports, progress reports, medical reports, and social information or reports, should, to the extent possible, be structured so as to separate opinion from factual information. The factual information shall be made available for review by the inmate; opinion information shall be confidential. Psychiatric or psychological test results or diagnoses shall be deemed confidential.

205—8.12(906) Interview procedure. The board or board panel shall interview the inmate and consider the inmate's records with respect to history, current situation, parole and work release prospects, and other pertinent matters. The board or board panel shall give the inmate ample opportunity to express views and present materials.

205—8.13(906) Case review procedure. The board or board panel may consider the inmate's records and other information with respect to history, current situation, parole and work release prospects, and other pertinent matters. A case review may take place at any time and is in addition to any other required review.

205—8.14(906) Conduct at parole proceedings.

8.14(1) Parole proceedings shall be open to the public except as otherwise necessary or proper.

8.14(2) Conduct of inmate.

a. Conduct of the inmate shall be in a manner consistent with decorum appropriate for a participant in a public meeting of a governmental body.

b. An inmate may not orally or otherwise communicate with spectators or others present at the parole proceeding except as permitted by the panel or board.

c. The inmate shall speak to the panel or board or counselor only when asked a question or directed otherwise to do so.

d. Each inmate will be given an opportunity to make an independent statement to the panel or board at some point during the parole proceeding. The panel or board may limit this statement in any manner as to topic or time. Specifically subject to this limitation will be persons who have no realistic grounds to believe a parole will be granted, i.e., those with mandatory minimum sentences, those serving life terms, or those having served short times relative to the severity of their crimes and length of their sentences.

e. Failure to comply with the direction of the panel or board in limiting statements, in communicating with persons present at the parole proceeding, or any absence of decorum which could disrupt or delay the proceeding may, at the dis-

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cretion of the board, result in a forfeiture of the right to an interview and a request by the board to have the institutional staff remove the inmate.

f. An inmate who forfeits the right to an interview for reasons under 8.14(2)“e” or for any other reason shall not be interviewed again until the inmate’s next annual review, or until such earlier time as determined by the board, except that the inmate may request an earlier interview. The request is to be made through the board liaison officer, the counselor or other institutional staff member, or the ombudsman, together with assurance by the inmate that no repeat of the offending conduct or other offending conduct will occur. A reinterview is subject to the discretion of the panel or board.

8.14(3) Conduct of spectators.

a. Spectators may not participate in the parole proceedings. The number of spectators will be limited by the number of seats provided. Only board staff or institutional staff will be allowed to stand during the interviews or between interviews, except during breaks of the panel or board or as necessary to enter and leave during times designated by the panel or board. An exception will be made for television camera operators.

b. Spectators may not enter or leave the room during interviews or between interviews, except that the board or panel will designate times when persons may enter and leave. This will be done at reasonable intervals, and may be between interviews even though the board or panel does not take a break.

c. Entering and leaving the interview room before and after the interview sessions and during breaks in the interview sessions shall be subject to the restrictions imposed by the staff of the institution at which the session is being held.

d. Spectators shall make no utterances which are intended to be or can be heard by the inmate or the panel. This includes any conversation among spectators.

e. Spectators shall conduct themselves in a manner consistent with decorum appropriate for a public meeting of a governmental body.

f. Any activity deemed inappropriate by the panel or institutional staff under the guidelines in the rules may result in a request by the panel or institutional staff for the offending party or parties to leave. Warnings for inadvertent or minor misconduct may or may not be given the first time it occurs, and any subsequent offending activity will result in a request to leave. Refusal to leave upon request will result in a request by the panel to have the person or persons removed by the institutional staff.

All spectator places shall be on a first-come, first-served basis in accordance with the rules of the institution or the department of corrections.

g. A spectator who leaves during a time designated for entering or leaving or during a short break by the panel may retain a place if the person returns at the next time designated for that purpose. A person does not retain a place at the hearing over breaks taken for lunch or dinner or overnight.

8.14(4) Conduct of the media.

a. General. Broadcasting, televising, recording and photographing will be permitted in the interview room during open sessions of the board or panel, including recesses between sessions, under the following conditions:

(1) Permission first shall have been granted by the institution or department of corrections, which may prescribe conditions and restrictions for bringing equipment into areas of the institution.

(2) Media coverage of any proceeding which is held in closed session under Iowa law is prohibited.

(3) The quantity and types of equipment permitted in the interview room shall be subject to the discretion of the panel or board within the guidelines in these rules, and subject to the permission of the institution or department of corrections.

(4) Notwithstanding the provisions of any of these procedural or technical rules, the panel or board may permit the use of other equipment provided the application for variance is made in advance. Ruling upon the variance application shall be in the discretion of the panel or board, subject to permission of the institution or department of corrections to bring in or move equipment.

(5) The panel or board may limit or terminate photographic or electronic media coverage by any or all media participants at any time during the proceedings in the event the panel or board finds that rules in this chapter or additional rules imposed by the institution or department of corrections have been violated.

(6) The rights of motion picture and electronic coverage provided herein may be exercised only by persons or organizations which are part of the news media, except that individuals may use sound tape recorders.

b. Advance notice of coverage. All requests by representatives of the news media to use television cameras or electronic sound recording equipment in the interview room shall be made to the institution in advance in accordance with department of corrections rules.

c. Equipment specifications. Equipment to be used by the media or public in interview rooms or meeting rooms during interview proceedings or board meetings held at the institutions must be unobtrusive and must not produce distracting sound. In addition, the equipment must satisfy the following criteria, where applicable:

(1) Still cameras. Still cameras and lenses must be unobtrusive, without distracting light or sound.

(2) Television cameras and related equipment. Television cameras are to be electronic and, together with any related equipment to be located in the interview room, must be unobtrusive in both size and appearance, without distracting sound or light. Television cameras are to be designed or modified so that participants in the parole interview being covered are unable to determine when recording is occurring.

(3) Audio equipment. Microphones, wiring and audio recording equipment shall be unobtrusive and shall be of adequate technical quality to prevent interference with the proceeding being covered. Any changes in existing audio systems must be approved by the panel or board. No modifications of existing systems shall be made at public expense.

(4) Advance approval. It shall be the duty of media personnel to demonstrate to the panel or board reasonably in advance of the proceeding that the equipment sought to be utilized meets the criteria set forth in this rule. Failure to obtain advance panel or board approval for equipment may preclude its use in the proceeding. All media equipment and personnel shall be in place at least 15 minutes prior to the scheduled time of commencement of the proceeding.

d. Lighting. Other than light sources already existing in the interview room, no flashbulbs or other artificial light device of any kind shall be employed in the interview room. With the concurrence of the panel and institutional staff, however, modifications may be made in light sources existing in the interview room (e.g., higher wattage light bulbs), provided the modifications are installed and maintained without public expense.

e. Equipment and pooling. The following limitations on the amount of equipment and number of photographic and broadcast media personnel in the interview room shall apply:

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(1) Still photography. Not more than two still photographers, each using not more than two camera bodies and two lenses, shall be permitted in the interview room at any one time during a parole proceeding.

(2) Television. Not more than two television cameras, each operated by not more than one camera person, shall be permitted in the interview room during a parole proceeding. All components must be contained within the area designated for the camera. Where possible, recording and broadcasting equipment which is not a component part of a television camera shall be located outside the interview room.

(3) Audio. Not more than one audio system shall be set up in the interview room for broadcast coverage of a parole proceeding. Audio pickup for broadcast coverage shall be accomplished from any existing audio system present in the interview room, if the pickup would be technically suitable for broadcast. Where possible, electronic audio recording equipment and any operating personnel shall be located outside the interview room.

(4) Pooling. Where the above limitations on equipment and personnel make it necessary, the media shall be required to pool equipment and personnel. Pooling arrangements shall be the sole responsibility of the media, and the panel or board shall not be called upon to mediate any dispute as to the appropriate media representatives authorized to cover a particular parole proceeding.

f. Location of equipment and personnel. Equipment and operating personnel shall be located in, and coverage of the proceedings shall take place from, an area or areas within the interview room designated by the panel or institutional staff. The area or areas designated shall provide reasonable access to the proceeding to be covered.

g. Movement during proceedings. Television cameras and audio equipment may be installed in or removed from the interview room only when the panel or board is not in session. In addition, the equipment shall at all times be operated from a fixed position. Still photographers and broadcast media personnel shall not move about the interview room while proceedings are in session, nor shall they engage in any movement which attracts undue attention. Still photographers shall not assume body positions inappropriate for spectators.

h. Decorum. All still photographers and broadcast media personnel shall be properly attired and shall maintain decorum appropriate for a public meeting of a governmental body at all times while covering a parole proceeding.

205—8.15(906) Parole and work release decisions.

8.15(1) The board shall grant parole to an inmate on work release status if at least three members of the board agree that the inmate can be released without detriment to the community or to the inmate. If three members do not agree, the board shall deny parole.

8.15(2) The board shall grant parole or work release to an inmate with a risk assessment score of 1, 2, 3, 4, 5, or 6 only if at least three members of the board agree that the inmate can be released without detriment to the community or to the inmate. If three members do not agree, the board shall deny parole or work release.

8.15(3) The board shall defer granting parole or work release to an inmate with a risk assessment score of 7 or 8 and refer the case to the full board for review. The full board shall grant parole or work release only if at least four members agree that the inmate can be released without detriment to the community or to the inmate. If four members do not agree, the board shall deny parole or work release. If there are not four board members available due to unfilled vacancies on

the board, conflicts of interest of board members, illness, or other reason, the board chairperson may, upon consultation with the board, suspend the four-vote requirement and allow parole or work release to be granted upon three votes.

8.15(4) The board shall defer granting parole or work release to an inmate with a risk assessment score of 9 and refer the case to the full board for review. The full board shall grant parole or work release only if the board members unanimously agree that the inmate can be released without detriment to the community or to the inmate. If the board members do not unanimously agree, the board shall deny parole or work release. If any of the five board members are not available due to unfilled vacancies on the board, conflicts of interest of board members, illness, or other reason, the board chairperson may, upon consultation with the board, suspend the five-vote requirement and allow parole or work release to be granted upon four votes if one board member is unavailable, or upon three votes if two board members are unavailable.

8.15(5) The board may determine if an inmate shall be required to provide a physical specimen to be submitted for DNA profiling as a condition of parole or work release. The board shall consider the deterrent effect of DNA profiling, the likelihood of repeated violations by the offender, and the seriousness of the offense. When funds have been allocated from the general fund of the state, or funds have been provided by other public or private sources, the board shall order DNA profiling, if appropriate.

205—8.16(906) Notice of parole and work release decisions.

8.16(1) The board shall give notice of a decision to grant parole by issuing an order for parole to the facility where the inmate in question is incarcerated.

8.16(2) The board shall give notice of a decision to grant work release by issuing an order for work release to the facility where the inmate in question is incarcerated.

8.16(3) The board shall give notice of a decision to deny parole or work release by issuing a notice of parole or work release denial to the facility where the inmate in question is incarcerated.

8.16(4) The board need not disclose a decision to grant or deny parole or work release to anyone other than the inmate in question and the facility where the inmate is incarcerated until at least two working days have elapsed from the date of the decision.

205—8.17(906) Parole authorized following work release.

8.17(1) The board may, at the time of granting work release, grant an offender parole contingent upon successful completion of work release. Whenever the board grants parole contingent upon successful completion of work release, it shall indicate in the offender's file any special conditions for parole and that parole is contingent upon successful completion of work release.

8.17(2) The residential manager shall make a determination whether the offender has successfully completed the work release. For the purpose of this rule, successful completion of work release shall mean, at a minimum, the absence of any violent acts or threats of violence by the offender from the time the work release was authorized and either (1) the offender has completed all board of parole recommended programs or (2) the offender has enrolled in all recommended programs not completed and is making satisfactory progress toward completion and the facility is able to arrange for continued program participation while the offender

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is on parole. When an offender successfully completes the work release program, the residential manager shall certify that fact to the board in a written or electronic certification. Upon receipt of the certification, the chairperson or the chairperson's designee shall cause a parole order to be issued and forwarded to the residential facility where a parole agreement will be executed by the offender with such parole conditions as the board may require in its original release decision. Parole shall be effective only upon execution of the parole order and agreement by the parole officer and the parolee. No further action is required by the parole board for said parole. Before the parole becomes effective, the chairperson or the chairperson's designee may refer the case back to the board for further consideration. Nothing in this rule shall prevent the parole board from considering revocations of work release or parole for violations of the parole order, agreement, or any other provision of law, as otherwise provided in the board's administrative rules.

8.17(3) If the residential manager does not certify that an offender has successfully completed work release within the six-month limit established in Iowa Code section 904.904, and if the offender's work release has not otherwise been revoked, the offender's case shall be reviewed by the board of parole. The board may grant parole, extend work release, refer the offender back to prison, or take any other action authorized by law.

8.17(4) The grant of parole contingent upon successful completion of work release shall comply with subrules 8.15(1) through 8.15(4).

8.17(5) An offender who has been granted parole contingent upon successful completion of work release and who fails to successfully complete work release for whatever reason shall be reviewed for further release consideration according to the board's administrative rules.

8.17(6) Parole granted under this rule shall be administered and supervised according to the board's administrative rules, 205—Chapters 10 and 11.

These rules are intended to implement Iowa Code chapters 904A and 906.

CHAPTER 9

Reserved

CHAPTER 10

PAROLE AND WORK RELEASE SUPERVISION

205—10.1(906) Release processing. Following the issuance of an order for parole or work release by the board, the inmate shall be processed for release pursuant to the rules and procedures of the department of corrections and the district department.

205—10.2(906) Parole supervision. An inmate granted parole or work release shall be under the supervision of the department of corrections, the district department, or a receiving state pursuant to the interstate probation and parole compact. Parole supervision shall continue until the expiration of the maximum sentence, subject to early discharge by the board or the district department.

205—10.3(906) Parole or work release agreement. A parole or work release agreement containing standard and special conditions of parole or work release shall be prepared without unreasonable delay following the board's issuance of the order for parole or work release. The board may change these standard conditions from time to time. Special conditions of parole may be imposed at any time in accordance with the needs of the parolee as determined by the board, the de-

partment of corrections, or the district department. The parole or work release agreement may provide for a search process and procedure of the parolee or work releasee. The parole or work release shall not commence until the inmate has signed the agreement. If the inmate is on work release status at the time parole is granted, the inmate shall remain on work release status until the parole agreement is signed by the parole officer and the inmate.

These rules are intended to implement Iowa Code chapter 906.

CHAPTER 11

PAROLE REVOCATION

205—11.1(906) Voluntary termination of parole. Any voluntary termination of parole should be executed in writing by the parolee and approved by the parole officer. Upon the execution of the voluntary termination of parole, the parolee's parole is terminated and the parolee shall be returned to the Iowa Medical and Classification Center at Oakdale as soon as reasonably possible. The parole officer shall determine if the parolee shall be incarcerated prior to the parolee's return to the Iowa Medical and Classification Center and shall make arrangements accordingly. The parolee shall receive credit for the time spent on parole prior to the voluntary termination of parole.

205—11.2 Reserved.

205—11.3(908) Revocation initiated. Parole revocation procedures shall be initiated only as provided by Iowa Code chapter 908, which this rule is intended to implement.

205—11.4(908) Revocation of parole. The board of parole or its administrative parole judge, for good cause shown, may revoke any parole previously granted. Good cause for revocation of parole shall include the violation of a condition or conditions of the parole agreement or parole plan. Parole revocation procedures, including the parole revocation hearing, are governed by Iowa Code chapter 17A.

205—11.5(908) Parole violations.

11.5(1) The parole officer shall report to the board any parolee who is reasonably believed to have engaged in any of the following types of behavior:

a. Violation of any federal or state laws, except simple misdemeanors.

b. Any violent or assaultive conduct.

c. Possession, control or use of any firearms, imitation firearms, explosives or weapons as defined in federal or state statutes.

d. Sale, possession, continual or problem use, transportation or distribution of any narcotic or other controlled substance or excessive use of alcohol by the parolee.

e. A parolee whose whereabouts are unknown and who has been unavailable for contact for 30 days, or about whom reliable information has been received indicating that the parolee is taking flight or absconding.

f. Any behavior indicating that the parolee may be suffering from a mental disorder which impairs the parolee's ability to maintain the parolee in the community or which makes the parolee a danger to the parolee or others when the mental disorder cannot be adequately treated while the parolee is in the community.

g. Any other conduct or pattern of conduct in violation of the conditions of parole deemed sufficiently serious by the parole officer.

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11.5(2) The parole officer or supervisor is authorized to sanction any other parolee misconduct not required to be reported above.

205—11.6(908) Parole violation report. The parole violation report is a document prepared by the parole officer on a form or medium provided by the board specifying the parole violation charges against a parolee and containing or referring to information known to the parole officer relevant to the charges.

11.6(1) Supplemental parole violation report. A supplemental parole violation report may be submitted to report sufficient new information or evidence which proves or disproves violations previously charged; note court action on charges which are being prosecuted in a criminal proceeding; expand, clarify, or correct information in an earlier report; provide the board with information not related to the violation but which may affect the board's decision regarding the appropriate disposition; provide additional requested information to the board at any time; or change the parole officer's recommendation. A supplemental report shall be filed upon the apprehension of a parolee on absconder status.

11.6(2) Recommendations. The parole officer shall recommend the appropriate disposition necessary to deal with the alleged violation. In a parole violation report, the parole officer may make one of the following recommendations:

a. Continue on parole. This recommendation may be used when a violation charge is not serious enough to warrant reincarceration. A copy of the violation report containing a "continue on parole" recommendation shall be personally delivered and explained to the parolee by the parole officer, and the parolee shall be given an opportunity to admit the alleged violations. Admitted violations contained in the report may be used to adjust time calculations in a later revocation proceeding. In the event that a dispute arises as to alleged violations, the parolee may request a parole hearing. An administrative parole judge shall review the violation report and enter an order either affirming the recommendation to continue on parole or scheduling the matter for a parole revocation hearing.

A parolee shall be allowed only two violation reports containing a "continue on parole" recommendation in a 12-month period, after which a parole revocation hearing must be scheduled.

Generally, violations occurring more than 12 months prior to the request for a parole revocation hearing will not be used to adjust time calculations, except in absconder cases and related matters.

b. Schedule for revocation proceedings. This recommendation may be used whenever the violation(s) alleged is so serious that reincarceration is necessary.

c. Delay action. This recommendation is used when there is a lack of information at the time the report is submitted or because charges are still pending and final disposition is unknown or the whereabouts of the parolee are unknown. The parole officer shall notify the board of the reason(s) for the recommendation to delay action.

d. Issue a detainer. This recommendation is used to request that an Iowa detainer be placed against an Iowa parolee who is serving time in another jurisdiction for an offense committed while on parole which would constitute a felony or aggravated misdemeanor if committed in Iowa.

e. Continue on parole and impose special condition 209A of the parole agreement, participation in the violator's program. This recommendation may be used when there has been a violation of parole, but treatment in the violator's pro-

gram is seen as a reasonable alternative to revocation of parole.

f. Automatic revocation. This recommendation may be used when a parolee has been convicted of and sentenced for a new felony.

11.6(3) District review.

a. Parole officer's responsibility. After discovery of information indicating a possible violation(s) of parole and determination by the parole officer that the violation(s) must be reported to the board, the parole officer shall prepare a parole violation report.

b. Parole supervisor review. After the preparation of a parole violation report, the supervisor shall review the report. If the supervisor concurs with the recommendation made, the supervisor shall submit the report to the business office of the parole board for review and scheduling of a parole revocation hearing, if required.

205—11.7(908) Parole revocation hearing. Following receipt of a parole officer's request for a parole revocation hearing, the administrative parole judge or board's designated officer shall set the date, time and place of the parole revocation hearing and shall cause a notice of parole revocation hearing to be completed. The parole revocation hearing shall be held in any county in the same judicial district as that in which the alleged parole violator had the initial appearance, or in the county from which the warrant for the arrest of the alleged parole violator was issued.

11.7(1) Parole revocation hearing notice. The parole officer or board's designated officer shall cause to be prepared a written notice to the parolee of the date, time, and place of the parole revocation hearing, which shall:

a. Include a complete copy of the report of violations including all documents referred to therein except confidential material defined in 205—subrule 6.4(2).

b. Be served upon the parolee by personal service. The notice may be served by any person 18 years of age or older at least seven days prior to the parole revocation hearing unless the parolee waives the right to seven days' advance notice.

c. Inform the parolee of the purpose of the hearing, the violations of parole conditions alleged, the circumstances of the alleged violations, the possible action which may be taken as a result of the revocation proceedings, and the following rights to which the parolee shall be entitled at the parole revocation hearing:

(1) To appear and speak in the parolee's own behalf and to be aided by an interpreter if aid is determined to be necessary by the administrative parole judge.

(2) To be represented by an attorney or, if the parolee is indigent, the right to be represented by an attorney pursuant to Rule 2.28 of the Iowa Rules of Criminal Procedure.

(3) To remain silent.

(4) To present witnesses to testify on the parolee's behalf as to matters relevant to the alleged violation of parole.

(5) To confront and cross-examine adverse witnesses unless the administrative parole judge determines that such witnesses would be subjected to risk of harm.

(6) To present documentary evidence and any relevant material or information.

11.7(2) Testimony at parole revocation hearing. All testimony shall be under oath.

11.7(3) Parole revocation hearing recorded. Parole revocation hearings shall be mechanically recorded. The recording or transcription thereof shall be filed and maintained by the board of parole for at least five years from the date of the parole revocation hearing.

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11.7(4) Witnesses segregated. The administrative parole judge on the judge's own motion or on the request of the parolee, parolee's counsel, or any representative of the state may order witnesses to be segregated except that the parole officer, parolee, and counsel may be present at all times at the hearing.

11.7(5) Parole revocation hearing evidence. The admissibility of evidence at parole revocation proceedings is governed by Iowa Code section 17A.14.

a. Documentary evidence. The parole officer shall ensure that all relevant documentary evidence is available at the hearing and has been made available to the parolee and the parolee's attorney prior to the hearing unless designated confidential. This evidence includes the violation report and statements of witnesses. When relevant documentary evidence is not available, the parole officer shall specify what evidence is unavailable and why.

b. Physical evidence. Physical evidence is ordinarily not required at the hearing. The parole officer may bring physical evidence to the hearing if the parolee has requested it or it appears necessary for the hearing, security is not endangered, and there is no other means of presenting the information.

11.7(6) Witnesses.

a. Parolee request. A parolee may request either friendly or adverse witnesses. If a witness is requested by the parolee or the parolee's attorney, the parolee or the parolee's attorney shall notify the parole officer.

b. Parole officer request. If, in preparing the case prior to the hearing, the parole officer requires a particular witness to demonstrate essential facts of violation, attendance of that witness may be requested by the officer even though the parolee has not requested that witness. If a witness is requested by the parole officer, the officer shall notify the parolee or the parolee's attorney.

c. Witnesses' transportation. All witnesses shall provide their own transportation.

d. Fearful witnesses. All witnesses who refuse to attend the hearing either because they would be subjected to risk of harm if their identities were disclosed or who, even if their identities were known, fear for their safety should they attend the hearing shall be interviewed by the parole officer prior to the hearing, and their information and the reasons for their fear shall be documented in writing or on tape. The administrative parole judge shall determine whether good cause exists to excuse a witness's attendance and shall document the decision including the reasons.

e. Interviewing witnesses. A parolee or the parolee's attorney has the right to speak to possible witnesses, but it is completely within the discretion of an individual witness whether to speak to or disclose the witness's whereabouts to a parolee or the parolee's attorney. No attempt shall be made by the parole board staff to influence the witness's decision.

11.7(7) Subpoenas—general. Subpoenas may be issued to require the attendance of witnesses or the production of documents at parole revocation hearings.

a. Who may request. The parolee, the parolee's attorney, parole officer, or board staff may request that a subpoena be issued.

b. To whom made. Requests shall be made directly to the administrative parole judge or the board's designated officer as appropriate.

c. When made. The request shall be made prior to the scheduled hearing.

d. Subpoena duces tecum. The request for a subpoena duces tecum shall be accompanied by a declaration in support of the request. The declaration must show good cause

for production of documentary evidence and specify precisely the documentary evidence to be produced, the relevance and materiality of that evidence to the hearing, and verification that the requested witness has possession or control of the documentary evidence.

e. The board of parole shall not be required to pay subpoena service fees, witness fees, or witness transportation expenses.

11.7(8) Continuances.

a. A hearing may be continued by the presiding administrative parole judge for good cause shown, either upon the presiding judge's own motion or upon the request of a party. A party's request for continuance shall be made in writing to the board's business office prior to the hearing. Each party shall be granted only one continuance except that in the case of extreme emergency, determined by the presiding administrative parole judge, further continuance may be granted.

b. If, because of an emergency or other good cause, a party having received timely notice is unable to attend the hearing or to request continuance within the allotted time, the presiding administrative parole judge may continue the hearing and schedule another hearing with notice to all interested parties.

c. A notice of continuance may be served upon the parolee's attorney of record for the parole revocation proceeding, in lieu of personal service upon the parolee.

d. If a notice of continuance does not involve any new allegations of parole violation, it need not be served upon the parolee or the parolee's attorney of record at least seven days prior to the hearing date. However, if the notice of continuance includes allegations of violations beyond those contained in the original notice of hearing, it must be served upon the parolee or the parolee's attorney of record at least seven days prior to the hearing date.

11.7(9) Areas of responsibility. The following areas of responsibility will apply for a parole revocation hearing.

a. The parole officer shall be responsible for the following:

(1) Coordinating and scheduling location, security, and control of the parole revocation hearing in a courtroom unless good cause is established prior to the hearing;

(2) Preparing notice of hearing forms and causing the notices to be served;

(3) Notifying parolee's attorney of record of hearing date, time, and place;

(4) Notifying all necessary state witnesses of the hearing date, time, and place;

(5) Processing any required subpoenas on behalf of the state;

(6) Ensuring that all relevant state documents, forms, and materials are available at the hearing;

(7) Attending the hearing;

(8) Arranging security for posthearing transfer of the parolee in the event incarceration is ordered.

b. The administrative parole judge shall be responsible for the following:

(1) Maintaining records on all hearings in the field;

(2) Advising the business office regarding progress of each case;

(3) Forwarding to the business office all materials and forms when hearings are completed.

11.7(10) Parole revocation hearing—adjudication.

a. At the conclusion of the adjudication stage of the hearing, the administrative parole judge shall determine whether the parolee has violated the conditions of parole and shall verbally advise the parolee of the decision.

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b. If the administrative parole judge determines that the parolee has not violated the conditions of parole, the judge shall order that the parolee be released from custody and continued on parole.

c. If the administrative parole judge finds that the parolee has violated a condition or conditions of parole, the judge shall make one of the following dispositions at the parole revocation hearing:

- (1) Revocation of parole;
- (2) Revocation of parole with the parolee placed on work release;
- (3) Reinstatement of parole with the previous parole conditions;
- (4) Reinstatement of parole with a modification of the parole conditions;
- (5) Continuation of the dispositional portion of the hearing.

d. The administrative parole judge shall determine from the record established at the final revocation hearing the date(s) of violation of parole. The judge shall also determine the number of days of parole which shall not be counted toward the discharge of the parolee's sentence. This number shall not exceed the number of days after the date of first violation during which the parolee was not incarcerated.

11.7(11) Parole revocation—hearing summary. The administrative parole judge or the board's designated officer shall forward a summary of the parole revocation hearing to the parolee, the parolee's attorney, the parole officer, and the board office as soon as reasonably possible following the parole revocation hearing. The summary of the parole revocation shall consist of a summary of the proceeding and shall contain the judge's findings of fact, conclusions of law and disposition of the matter.

11.7(12) Parole revocation hearing—conduct of the media. The provisions governing the conduct of the media at parole interviews as set out in 205—subrule 8.14(4) shall also apply to parole revocation hearings, except that decisions committed to the discretion of the board or board panel in that rule shall be made by the presiding administrative parole judge.

205—11.8(908) Appeal or review. The order of the administrative parole judge shall become the final decision of the board of parole unless, within ten days of the date of the decision, the parole violator appeals the decision or a panel of the board reviews the decision on its own motion. On appeal or review of the judge's decision, the board panel has all the power which it would have in initially making the revocation hearing decision. The appeal or review shall be conducted pursuant to rules adopted by the board of parole. The record on appeal or review shall be the record made at the parole revocation hearing conducted by the administrative parole judge. Appeals must be received at the parole office or be postmarked by the applicable date or they will not be considered.

205—11.9(908) Interstate compact parole revocation probable cause hearings. The Iowa board of parole may conduct interstate compact parole probable cause hearings under the same procedures as the Iowa parole revocation hearings.

11.9(1) Interstate compact parole revocation probable cause hearings. The Iowa board of parole, or an administrative parole judge, may conduct a probable cause hearing for a parolee from another state who is on parole in Iowa under the terms of the interstate compact on probation and parole ac-

cording to the same procedures which govern parole revocation hearings for Iowa parolees who are on parole in Iowa.

11.9(2) Interstate compact parole revocation hearings. If an Iowa parolee was on parole outside the state of Iowa through the interstate compact on probation and parole and has been returned to Iowa following a finding of probable cause in the receiving state, a parole revocation hearing shall be conducted for the parolee at the Iowa institution at which the parolee is incarcerated. This hearing shall be conducted according to the same procedures as those specified for hearings conducted for Iowa parolees who are on parole in the state of Iowa.

205—11.10(908) Parolee convicted of new offenses. A parolee who is found guilty of a new offense or who pleads guilty to a new offense, including a simple misdemeanor, has no right to the adjudication stage of the parole revocation hearing with regard to the new offense.

205—11.11(908) Waivers. When the parole officer makes a recommendation to the board of parole for revocation of parole, the parole officer shall inform the parolee of the parolee's rights and afford the parolee the opportunity to execute a waiver of parole revocation hearing.

The parole officer shall also inform the parolee of the opportunity to waive the parolee's right to personal appearance and consent to the parole revocation hearing's being conducted over the telephone.

11.11(1) Waiver of parole revocation hearing. A waiver of parole revocation hearing shall constitute an admission of the alleged violation(s) and shall include a waiver of any right to a personal appearance before the administrative parole judge to contest the violations.

11.11(2) Parole revocation hearing waiver procedures. If the parolee desires to execute a waiver of parole revocation hearing, the waiver shall be entered on the appropriate form provided by the board which shall be signed by the parolee in the presence of the administrative parole judge or by the parolee in the presence of the parole officer/supervisor if the waiver hearing is conducted electronically. The administrative parole judge shall make a verbatim record of the waiver proceeding and shall address the parolee personally and inform the parolee of and determine that the parolee understands the contents of the waiver form which shall include:

- a. The nature of the parole violation to which the waiver is addressed;
- b. The legal rights of the parolee;
- c. The fact that the execution of the waiver constitutes an admission of the alleged violation(s);
- d. The fact that the parolee may be committed to the custody of the Iowa department of corrections without further proceedings;
- e. The fact that the waiver is complete and final upon execution;
- f. The fact that the waiver may be appealed according to the parole board's parole revocation appeal process in rule 205—11.8(908).

11.11(3) Waiver of the right to personal appearance. In the event the parolee executes a waiver of the right to personal appearance and consent to parole revocation hearing to be conducted over the telephone, the parole revocation hearing shall be scheduled and conducted as a routine parole revocation hearing with the exception that it shall be conducted electronically.

205—11.12(908) Conviction of a felony while on parole. When a parolee is convicted and sentenced to incarceration in Iowa for a felony committed while on parole, or is convicted

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and sentenced to incarceration under the laws of any other state of the United States or a foreign government or country for an offense committed while on parole and which if committed in Iowa would be a felony, the parolee's parole shall be deemed revoked as of the date of the commission of the offense.

11.12(1) The parole officer shall inform the sentencing judge that the convicted defendant is a parole violator. The term for which the defendant shall be imprisoned as a parole violator shall be the same as that provided in cases of revocation of parole for violation of the conditions of parole. The new sentence of imprisonment for conviction of a felony shall be served consecutively to the sentence for which the defendant was on parole, unless a concurrent term of imprisonment is ordered by the court.

11.12(2) The parole officer shall forward to the board of parole a violation report together with a file-stamped copy of the judgment entry and sentencing order for the offense committed during the parole. An administrative parole judge shall review the violation report and the judgment entry and sentencing order and, if satisfied that the conditions of Iowa Code section 908.10 and of this rule have been met, shall issue an order revoking the parole. The judge shall also determine the date of commission of the felony offense and the date of subsequent incarceration in a state institution. Time loss shall be the time between these two dates, except that the parolee shall receive credit for any time the parolee was incarcerated in a county jail between these two dates.

11.12(3) The parolee shall be notified in writing that the parole has been revoked on the basis of the new conviction, and a copy of the commitment order shall accompany the notification. The parolee's record shall be reviewed pursuant to the provisions of Iowa Code section 906.5, or as soon as practical after a final reversal of the new conviction.

11.12(4) An inmate may appeal the revocation of parole under this rule according to the procedure indicated in rule 205—11.8(908).

11.12(5) Neither the administrative parole judge nor the board shall retry the facts underlying any conviction.

These rules are intended to implement Iowa Code chapters 906 and 908.

CHAPTER 12

Reserved

CHAPTER 13

PAROLE DISCHARGE

205—13.1(906) Discharge from parole supervision.

13.1(1) Statutory discharge. The board shall discharge a parolee from parole supervision when the term of the parolee's sentence expires.

13.1(2) Early discharge. The board or the supervising district department may discharge a parolee from parole supervision prior to the expiration of the term of the parolee's sentence when the board or district department determines that the parolee is able and willing to fulfill the obligations of a law-abiding citizen without further supervision.

205—13.2(906) Persons not eligible. A parolee convicted of a violation of Iowa Code section 709.3, 709.4, or 709.8 committed on or with a child shall not be discharged from parole until the term of the parolee's sentence expires.

These rules are intended to implement Iowa Code section 906.15.

CHAPTER 14
EXECUTIVE CLEMENCY**205—14.1(902) Interviews of inmates serving life terms.**

The board shall not grant a parole or work release to a Class "A" felon serving a life term unless the governor commutes the sentence to a term of years. Administrative rules relating to the parole and work release consideration of an inmate sentenced to an indeterminate term shall not apply to an inmate sentenced to a life term. The board shall interview a Class "A" felon serving a life term to determine whether to recommend that the governor commute the sentence to a term of years. The board shall recommend that the governor commute the sentence when the board concludes that the inmate should be considered for release on parole or work release. In making such a recommendation, the board shall also indicate the existence of any registered victims and communicate any opinions expressed by those victims regarding release of the inmate.

205—14.2(902) Review of inmates serving life terms. The board may, at its discretion, review the record of a Class "A" felon serving a life term.

205—14.3(914) Executive clemency applications.**14.3(1)** Applications to the board.

a. A person convicted of a criminal offense may apply to the board for a recommendation to the governor for a reprieve, pardon, commutation of sentence, or remission of fines and forfeitures at any time following the person's conviction.

b. An application for a pardon or commutation of sentence shall be on the form provided by the board. The form may be obtained by contacting the board's business office.

c. An application for a reprieve or remission of fines and forfeitures shall be in writing.

d. The applicant shall submit the executive clemency application to the board's business office.

14.3(2) Applications to the governor. Upon the request of the governor, the board shall take charge of all correspondence in reference to an executive clemency application filed with the governor and shall provide the governor with the board's advice and recommendation.

14.3(3) Restoration of citizenship.

a. A person convicted of a criminal offense may apply for restoration of citizenship at any time following the discharge of the person's sentence.

b. A person applying for restoration of citizenship shall submit the Executive Clemency Application form to the governor. This form may be obtained from the governor's office or from the board. The governor shall obtain a recommendation regarding restoration of citizenship from the board.

205—14.4(914,902) Board investigation. The board may investigate an application or district department recommendation with respect to history, current situation, parole prospects and other pertinent matters. The board may consider the application or recommendation, transcripts of judicial proceedings and all documents submitted with the application, and other documents as the board determines is appropriate, and may interview public officials, victims, and witnesses and other individuals as the board determines is appropriate.

205—14.5(914,902) Executive clemency recommendations.**14.5(1)** Decision.

a. The board shall recommend that the governor grant commutation of sentence to a Class "A" felon serving a life

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term when the board unanimously agrees that the inmate should be considered for release on parole. If the board does not unanimously agree, the board shall recommend that the governor not grant commutation of sentence.

b. The board shall recommend that the governor grant executive clemency to a person other than a Class "A" felon serving a life term when at least three members of the board agree that the person has demonstrated that the person will become or continue to be a law-abiding citizen. If three members of the board do not agree, the board shall recommend that the governor not grant executive clemency.

14.5(2) Notice of board recommendation. The board shall give notice of an executive clemency recommendation to the office of the governor and, if requested, to the inmate or applicant.

14.5(3) Board consideration following commutation. The board shall consider the parole and work release prospects of an inmate whose sentence has been commuted by the governor.

14.5(4) Executive clemency reconsiderations.

a. The board may reconsider at any time a board recommendation to grant executive clemency that the governor has denied and returned to the board. The procedures for reviewing an executive clemency application shall apply to the reconsideration of a denied recommendation.

b. The board may refile the recommendation with the governor or withdraw the recommendation.

205—14.6(902) Commutation procedure for Class "A" felons.

14.6(1) Initial review. The board of parole, or its designee, will initially review an application for commutation to determine whether the inmate is eligible to apply for commutation pursuant to Iowa Code section 902.2. If the inmate is not eligible to apply for commutation pursuant to Iowa Code section 902.2, the board shall return the application to the governor and notify the governor of the reasons.

14.6(2) Parole board commutation investigation process.

a. If the applicant is eligible to apply for commutation pursuant to Iowa Code section 902.2, the board shall conduct an investigation pursuant to that section and subrule 14.6(2).

b. The board may consider any documents the board deems appropriate including, but not limited to, the application and attached documents, transcripts of judicial proceedings, corrections information, and written recommendations, statements, and interviews of public officials, victims, and witnesses.

c. The board shall interview the applicant, pursuant to Iowa Code section 902.2, prior to submitting its recommendation to the governor. The board may interview any other person the board deems appropriate including, but not limited to, public officials, victims, and witnesses. The board may conduct any interview, including the interview of the applicant, through electronic means.

d. The board shall attempt to provide notice of the commutation investigation to any individual who would qualify as a victim under Iowa's victim notification law. Notice shall be by regular mail to the last-known address. The notice shall provide a specified amount of time for the victim to provide a statement to the board regarding the application for commutation.

e. The board may utilize the resources of the department of public safety for assistance with any part of its investigation.

f. The board may hold a public hearing to receive comments from the general public on an application for commutation. The determination to hold a public hearing to re-

ceive public comments is solely at the discretion of the board.

14.6(3) Recommendation and report.

a. The board shall vote on a recommendation regarding the application. Any decision to recommend commutation shall be by unanimous vote. The board may continue the matter until such time as the board may determine by majority vote.

b. The board may consider any factor it deems appropriate when considering commutation including, but not limited to, the nature and circumstances of the crime, the number of years the applicant has served, the applicant's previous criminal record, the applicant's conduct while confined, the impact on the victim, and the public interest.

c. The board shall prepare a written report of its findings and recommendations and forward its report to the governor.

14.6(4) Board consideration following commutation. The board shall consider the parole and work release prospects of any inmate whose life sentence has been commuted by the governor. The grant of commutation does not require the board to grant parole or work release. The board shall consider parole or work release pursuant to the standards in 205—Chapter 8.

These rules are intended to implement Iowa Code sections 902.2, 902.4, and 904A.4(7) and chapter 914.

CHAPTER 15
APPEAL OF DECISIONS

205—15.1(17A) General. An inmate, parolee, or work releasee may appeal any action of the board staff or board that affects that person except a decision to schedule a hearing or a work release transfer hearing decision, the denial of an appeal, or the decision to conduct an appearance by electronic means or the revocation of parole which shall be appealed according to the procedure indicated in rule 205—11.8(908).

205—15.2(17A) Grounds. The general grounds for an appeal include that the board action is:

1. In violation of constitutional or statutory provisions;
2. In excess of the statutory authority of the board;
3. In violation of a board rule;
4. Made upon unlawful procedure;
5. Affected by other error of law;
6. Unsupported by evidence or based on incorrect or incomplete information which, if correct or complete, might have resulted in a different action;
7. Unreasonable, arbitrary, or capricious or characterized by an abuse of discretion or a clearly unwarranted exercise of decision.

205—15.3(17A) Filing an appeal.

15.3(1) An appeal shall be filed in writing and shall state:

- a. The nature of the board action which is the subject of the appeal.
- b. The particular agency action which is the subject of the appeal.
- c. The grounds on which relief is sought.
- d. The relief sought.

15.3(2) All grounds shall be included in the same appeal, and all necessary documents and information shall be attached to the appeal.

15.3(3) The appeal shall be submitted to the business office. An appeal must be received at the parole board office, or be postmarked, within ten days of the receipt of notice of the action appealed. The board is not required to consider untimely appeals.

205—15.4(17A) Board review and decision. The board of

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parole, a designee of the board or a panel of three or more members of the board shall review the appeal. The chairperson or designee or the panel may affirm, modify or reverse the action being appealed or may defer the action for further consideration, including granting the inmate, parolee, or work releasee an appearance before the board. The board shall give notice to the inmate, parolee, or work releasee of its decision.

205—15.5(17A) Other appearances before the board. An inmate, parolee, or work releasee may request an appearance before the board by submitting a written request to the business office or a board liaison officer. A member of the board may grant the request for an appearance.

205—15.6(21) Electronic appearances. The board may require an inmate, parolee, or work releasee who has been granted an appearance before the board to appear by electronic means.

These rules are intended to implement Iowa Code chapter 17A.

CHAPTER 16 WAIVER AND VARIANCE RULES

205—16.1(17A) Definition. For purposes of this chapter, “a waiver or variance” means action by the board which suspends in whole or in part the requirements or provisions of a rule as applied to an identified person on the basis of the particular circumstances of that person. For simplicity, the term “waiver” shall include both a “waiver” and a “variance.”

205—16.2(17A) Scope. This chapter outlines generally applicable standards and a uniform process for the granting of individual waivers from rules adopted by the board in situations where no other more specifically applicable law provides for waivers. To the extent another more specific provision of law governs the issuance of a waiver from a particular rule, the more specific provision shall supersede this chapter with respect to any waiver from that rule.

205—16.3(17A) Applicability. The board may grant a waiver from a rule only if the board has jurisdiction over the rule and the requested waiver is consistent with applicable statutes, constitutional provisions, or other provisions of law. The board may not waive requirements created or duties imposed by statute.

205—16.4(17A) Criteria for waiver or variance. In response to a petition completed pursuant to rule 16.6(17A), the board may in its sole discretion issue an order waiving in whole or in part the requirements of a rule if the board finds, based on clear and convincing evidence, all of the following:

1. The application of the rule would impose an undue hardship on the person for whom the waiver is requested;
2. The waiver from the requirements of the rule in the specific case would not prejudice the substantial legal rights of any person;
3. The provisions of the rule subject to the petition for a waiver are not specifically mandated by statute or another provision of law; and
4. Substantially equal protection of public health, safety, and welfare will be afforded by a means other than that prescribed in the particular rule for which the waiver is requested.

205—16.5(17A) Filing of petition. A petition for a waiver must be submitted in writing to the board as follows:

16.5(1) Contested cases. If the petition relates to a pending contested case, the petition shall be filed in the contested

case proceeding, using the caption of the contested case.

16.5(2) Other. If the petition does not relate to a pending contested case, the petition may be submitted to the board’s executive director.

205—16.6(17A) Content of petition. A petition for waiver shall include the following information where applicable and known to the requester:

1. The name, address, and telephone number of the person or entity for which a waiver is requested, and the case number of any related contested case.
2. A description and citation of the specific rule from which a waiver is requested.
3. The specific waiver requested, including the precise scope and duration.
4. The relevant facts that the petitioner believes would justify a waiver under each of the four criteria described in rule 16.4(17A). This statement shall include a signed statement from the petitioner attesting to the accuracy of the facts provided in the petition, and a statement of reasons that the petitioner believes will justify a waiver.
5. A history of any prior contacts between the board and the petitioner relating to the regulated activity affected by the proposed waiver, including a description of any notices of violation, contested case hearings, or investigative reports relating to the regulated activity within the past five years.
6. Any information known to the requester regarding the board’s treatment of similar cases.
7. The name, address, and telephone number of any public agency or political subdivision which also regulates the activity in question, or which might be affected by the granting of a waiver.
8. The name, address, and telephone number of any person or entity that would be adversely affected by the granting of a petition.
9. The name, address, and telephone number of any person with knowledge of the relevant facts relating to the proposed waiver.
10. Signed releases of information authorizing persons with knowledge regarding the request to furnish the board with information relevant to the waiver.

205—16.7(17A) Additional information. Prior to issuing an order granting or denying a waiver, the board may request additional information from the petitioner relative to the petition and surrounding circumstances. If the petition was not filed in a contested case, the board may, on its own motion or at the petitioner’s request, schedule a telephonic or in-person meeting between the petitioner and the board’s executive director, a committee of the board, or a quorum of the board.

205—16.8(17A) Notice. The board shall acknowledge a petition upon receipt. The board shall ensure that, within 30 days of the receipt of the petition, notice of the pendency of the petition and a concise summary of its contents have been provided to all persons to whom notice is required by any provision of law. In addition, the board may give notice to other persons. To accomplish this notice provision, the board may require the petitioner to serve the notice on all persons to whom notice is required by any provision of law and provide a written statement to the board attesting that notice has been provided.

205—16.9(17A) Hearing procedures. The provisions of Iowa Code sections 17A.10 to 17A.18A regarding contested case hearings shall apply to any petition for a waiver filed within a contested case and shall otherwise apply to board

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proceedings for a waiver only when the board so provides by rule or order or is required to do so by statute.

205—16.10(17A) Ruling. An order granting or denying a waiver shall be in writing and shall contain a reference to the particular person and rule or portion thereof to which the order pertains, a statement of the relevant facts and reasons upon which the action is based, and a description of the precise scope and duration of the waiver if one is issued.

16.10(1) Board discretion. The final decision on whether the circumstances justify the granting of a waiver shall be made at the sole discretion of the board, upon consideration of all relevant factors. Each petition for a waiver shall be evaluated by the board based on the unique, individual circumstances set out in the petition.

16.10(2) Burden of persuasion. The burden of persuasion rests with the petitioner to demonstrate by clear and convincing evidence that the board should exercise its discretion to grant a waiver from a board rule.

16.10(3) Narrowly tailored exception. A waiver, if granted, shall provide the narrowest exception possible to the provisions of a rule.

16.10(4) Administrative deadlines. When the rule from which a waiver is sought establishes administrative deadlines, the board shall balance the special individual circumstances of the petitioner with the overall goal of uniform treatment of all similarly situated persons.

16.10(5) Conditions. The board may place any condition on a waiver that the board finds desirable to protect the public health, safety, and welfare.

16.10(6) Time period of waiver. A waiver shall not be permanent unless the petitioner can show that a temporary waiver would be impracticable. If a temporary waiver is granted, there is no automatic right to renewal. At the sole discretion of the board, a waiver may be renewed if the board finds that grounds for a waiver continue to exist.

16.10(7) Time for ruling. The board shall grant or deny a petition for a waiver as soon as practicable but, in any event, shall do so within 120 days of its receipt, unless the petitioner agrees to a later date. However, if a petition is filed in a contested case, the board shall grant or deny the petition no later than the time at which the final decision in that contested case is issued.

16.10(8) When deemed denied. Failure of the board to grant or deny a petition within the required time period shall be deemed a denial of that petition by the board. However, the board shall remain responsible for issuing an order denying a waiver.

16.10(9) Service of order. Within seven days of its issuance, any order issued under this chapter shall be transmitted to the petitioner or the person to whom the order pertains and to any other person entitled to such notice by any provision of law.

205—16.11(17A) Public availability. All orders granting or denying a waiver petition shall be indexed, filed, and available for public inspection as provided in Iowa Code section 17A.3. Petitions for a waiver and orders granting or denying waiver petitions are public records under Iowa Code chapter 22. Some petitions or orders may contain information the board is authorized or required to keep confidential. The board may accordingly redact confidential information from petitions or orders prior to public inspection.

205—16.12(17A) Summary reports. Semiannually, the board shall prepare a summary report identifying the rules for which a waiver has been granted or denied, the number of times a waiver was granted or denied for each rule, a citation

to the statutory provisions implemented by these rules, and a general summary of the reasons justifying the board's actions on waiver requests. If practicable, the report shall detail the extent to which the granting of a waiver has affected the general applicability of the rule itself. Copies of this report shall be available for public inspection and shall be provided semiannually to the administrative rules coordinator and the administrative rules review committee.

205—16.13(17A) Cancellation of a waiver. A waiver issued by the board pursuant to this chapter may be withdrawn, canceled, or modified if, after appropriate notice and hearing, the board issues an order finding any of the following:

1. The petitioner or the person who was the subject of the waiver order withheld or misrepresented material facts relevant to the propriety or desirability of the waiver; or

2. The alternative means for ensuring that the public health, safety and welfare will be adequately protected after issuance of the waiver order have been demonstrated to be insufficient; or

3. The subject of the waiver order has failed to comply with all conditions contained in the order.

205—16.14(17A) Violations. Violation of a condition in a waiver order shall be treated as a violation of the particular rule for which the waiver was granted. As a result, the recipient of a waiver under this chapter who violates a condition of the waiver may be subject to the same remedies or penalties as a person who violates the rule at issue.

205—16.15(17A) Defense. After the board issues an order granting a waiver, the order is a defense within its terms and the specific facts indicated therein for the person to whom the order pertains in any proceeding in which the rule in question is sought to be invoked.

205—16.16(17A) Judicial review. Judicial review of a board's decision to grant or deny a waiver petition may be taken in accordance with Iowa Code chapter 17A.

These rules are intended to implement Iowa Code chapter 17A.

ARC 3308B

PETROLEUM UNDERGROUND STORAGE TANK FUND BOARD, IOWA COMPREHENSIVE[591]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"b."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code Supplement sections 455G.4(3) and 455G.6(17), the Iowa Comprehensive Petroleum Underground Storage Tank Fund Board hereby gives Notice of Intended Action to amend Chapter 1, "General," and to adopt new Chapter 9, "UST Fund Board Authority to Transfer Liabilities to a Third Party (Loss Portfolio Transfers)," Iowa Administrative Code.

Chapter 1 describes the general mission and course of business of the Board. New rule 591—1.5(455G) adds a provision to address potential conflicts of interest for individual Board members and the manner in which those conflicts are

PETROLEUM UNDERGROUND STORAGE TANK FUND BOARD, IOWA COMPREHENSIVE[591](cont'd)

handled. New Chapter 9 describes the guidelines for the Board to consider when making a decision as to whether to enter into a transfer of a portion or all of its liabilities to a third party.

Public comments concerning the proposed amendments will be accepted until 4:30 p.m. on May 18, 2004. Interested persons may submit written or oral comments by contacting the Administrator to the UST Fund at 2700 Westown Parkway, Suite 320, West Des Moines, Iowa 50266; E-mail: Scott_Scheidel@aon.com; telephone (515)225-9263; or facsimile (515)225-9361.

These rules do not mandate additional combined expenditures exceeding \$100,000 by all affected political subdivisions or agencies and entities which contract with political subdivisions to provide services.

These rules are intended to implement Iowa Code Supplement section 455G.6(17).

The following amendments are proposed.

ITEM 1. Amend 591—Chapter 1 by adding **new** rule 591—1.5(455G) as follows:

591—1.5(455G) Potential conflicts of interest. A conflict of interest exists when a member of the board participates in a way that directly affects the personal or financial interests of the board member. Any board member who may have a personal or financial interest in an action should abstain from voting and shall be disqualified from serving and participating in deliberations, evaluations and decisions in bringing forth the proposal to the board for consideration. The board member or members who have or think they may have a conflict of interest should declare that there is or may be a conflict of interest. When a conflict of interest is determined to exist, the board member should abstain from voting and should be recorded as abstaining when votes are taken.

A majority of a quorum is necessary for any substantive action taken by the board. A quorum may include any member who has a conflict of interest, and a statement of a conflict of interest shall be conclusive for this purpose.

Any member who has a conflict of interest shall not defeat the quorum and shall not be eligible to vote on the matter in conflict. Any vote by a member with a conflict shall be excluded.

ITEM 2. Adopt the following **new** chapter:

CHAPTER 9

UST FUND BOARD AUTHORITY TO TRANSFER LIABILITIES TO A THIRD PARTY (LOSS PORTFOLIO TRANSFERS)

591—9.1(455G) Board authority for loss portfolio transfers. The board may enter into a transaction with a third party to transfer a portion or all of the board's liabilities. The board maintains the sole discretion to pursue such a transaction and may elect to pursue or not to pursue such a transaction based on whether or not the board deems such a transaction to be in the best interest of the program.

591—9.2(455G) Board liability subsequent to a loss portfolio transfer. Once a claim is transferred as part of a loss portfolio transfer transaction, the board, pursuant to Iowa Code Supplement section 455G.6(17), shall not reimburse any further costs associated with that claim.

591—9.3(455G) Minimum criteria to be evaluated. In order to determine whether or not a transfer of a portion or all of its liabilities is in the best interest of the program, the board will evaluate, at a minimum, the following criteria:

9.3(1) Effect on overall cost to reach closure on sites.

9.3(2) Effect on speed with which site closure will be accomplished.

9.3(3) Qualifications of the potential acquiring entity, including but not limited to:

- a. Financial viability.
- b. Experience with environmental claims.
- c. Knowledge of corrective action guidelines.

9.3(4) Impact on claims not included in the proposed transfer, including but not limited to:

- a. Ability to timely pay ongoing claims.
- b. Delays in completing corrective action.
- c. Board's ability to end liability for all claims in the future.

9.3(5) Impact the transfer will have on the statutory rights of the claimants.

591—9.4(455G) Proposal confidentiality. Any proposal submitted to the board will be handled in accordance with applicable Iowa law with regard to confidentiality.

591—9.5(455G) Requirement to seek bids. Any agreement to transfer liabilities shall be awarded on a competitive basis to the maximum extent practical. In those situations where it is determined that public bidding is not practical, the basis for the determination of impracticability shall be documented by the board or its designee.

591—9.6(455G) Proposal review. The board will review and respond within a reasonable time frame to any proposal submitted seeking a transfer of liabilities. Any board decision to enter into an agreement to transfer liabilities shall be completed consistent with public meeting laws in effect at that time. Work required by the department of natural resources at the site may not be delayed pending review of a proposal. Claims will continue to be handled in accordance with board policy during any pending proposal.

These rules are intended to implement Iowa Code Supplement section 455G.6(17).

ARC 3305B

TRANSPORTATION DEPARTMENT[761]

Notice of Intended Action

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code sections 307.10, 307.12, and 321.377, the Department of Transportation hereby gives Notice of Intended Action to amend Chapter 911, "School Transportation Services Provided by Regional Transit Systems," Iowa Administrative Code.

The amendments update a telephone number, adopt the current Code of Federal Regulations, correct references to the Code of Federal Regulations, add an Internet address for reviewing the regulations, and update citations to the Iowa Code. Also, the amendment in Item 4 coincides with changes in Iowa Code section 321.376. 2002 Iowa Acts, chapter 1140, section 36 [Iowa Code section 321.376], requires that school bus operators receive an authorization to operate a school bus from the Department of Education. A school bus operator's permit is no longer required.

TRANSPORTATION DEPARTMENT[761](cont'd)

The amendments to the Code of Federal Regulations (CFR) that have become final and effective since the 1999 edition of the CFR are listed in the information below. The parts affected are followed by Federal Register (FR) citations.

49 CFR Part 653/654/655**FR Vol. 66, No. 154, P. 41996**

(Prevention of alcohol misuse and prohibited drug use in transit operations; final rule.)

This rule combines the Federal Transit Administration's (FTA) drug and alcohol testing regulations. It also incorporates guidance issued by FTA in prior years in letters of interpretation, training classes, etc.

FR Vol. 68, No. 250, P. 75455

(Procedures for transportation workplace drug and alcohol testing programs; drug and alcohol management information system reporting; final rule.)

This rule changes the reporting format for all U.S. DOT required testing.

49 CFR Part 571**FR Vol. 65, No. 20, P. 4579-4582**

(Federal motor vehicle safety standards; roof crush resistance; final rule.)

Delays implementation of revised test procedures for Standard No. 216, roof crush resistance, to allow review of petitions and makes a technical amendment to correct a variance between preamble and regulatory text of April 1999 final rule.

FR Vol. 65, No. 27, P. 6327-6332

(Federal motor vehicle safety standards; hydraulic and electric brake systems; passenger car brake systems; final rule.)

This action makes revisions to Standard No. 135 specifying requirements for brake systems on electric vehicles.

FR Vol. 65, No. 44, P. 11751-11754

(Federal motor vehicle safety standards; school bus body joint strength; final rule; technical amendment; response to petition to delay effective date.)

This document delays the effective date of the final rule amending Standard No. 221, school bus body joint strength, until May 5, 2001. This document also makes a technical amendment by correcting a technical error in that final rule.

FR Vol. 65, No. 93, P. 30679

(Federal motor vehicle safety standards; occupant crash protection; final rule.)

This rule amends the occupant crash protection standard to require that future air bags be designed to create less risk of serious air bag-induced injuries than current air bags.

FR Vol. 65, No. 94, P. 30915-30918

(Federal motor vehicle safety standards; speedometer display; final rule.)

This technical amendment corrects an error in Table 2 of Standard No. 101 as a result of a final rule published September 24, 1998.

FR Vol. 65, No. 147, P. 46628-46643

(Federal motor vehicle safety standards; child restraint anchorage systems; final rule.)

This document extends the interim provisions for alternative anchorage standards under Standard No. 225, child restraint anchorage systems.

FR Vol. 65, No. 166, P. 51769-51772

(Federal motor vehicle safety standards; compressed natural gas fuel containers; final rule; correcting amendment.)

This action corrects errors in testing provisions on compressed natural gas fuel containers.

FR Vol. 65, No. 188, P. 57980-57992

(Federal motor vehicle safety standards; final rule.)

This document establishes a new Standard No. 305, electric-powered vehicles: electrolyte spillage and electrical shock protection, addressing safety issues exclusive to electric vehicles.

FR Vol. 65, No. 204, P. 63014-63021

(Federal motor vehicle safety standards; interior trunk release; final rule.)

This document establishes a new Standard No. 401, interior trunk release, which requires that all passenger cars with trunks be equipped with a release latch inside the trunk compartment beginning September 1, 2001.

FR Vol. 65, No. 210, P. 64624-64627

(Federal motor vehicle safety standards; compressed natural gas fuel container integrity; final rule.)

This action amends the test procedures in the federal motor vehicle safety standard concerning compressed natural gas fuel container integrity.

FR Vol. 66, No. 27, P. 9533

(Federal motor vehicle safety standards; electric-powered vehicles: electrolyte spillage and electrical shock protection; final rule.)

This action delays the effective date of the new Standard No. 305, electric-powered vehicles: electrolyte spillage and electrical shock protection, published September 27, 2000, for 60 days and clarifies that it does not apply to electric vehicles covered by Standard No. 500, low-speed vehicles.

FR Vol. 66, No. 160, P. 43113-43121

(Federal motor vehicle safety standards; interior trunk release; final rule.)

This action makes several substantive changes to the October 2000 final rule establishing a new federal motor vehicle safety standard that will require passenger cars with trunks to be equipped with a release latch inside the trunk compartment, excluding hatchbacks and station wagons. This action also clarifies the definition of trunk compartment and trunk lid.

FR Vol. 66, No. 182, P. 48220-48221

(Federal motor vehicle safety standards; occupant crash protection; correcting amendments.)

This document reinstates neck injury criteria inadvertently deleted as a result of the correcting amendment published in the Federal Register (63 FR 71390) on December 28, 1998.

FR Vol. 66, No. 232, P. 60157-60161

(Federal motor vehicle safety standards; response to petitions for reconsideration; final rule.)

This document makes clarifying amendments regarding application of the federal motor vehicle safety standard addressing occupant crash safety issues exclusive to electric vehicles. The document also concerns test conditions for battery state of charge and electrical isolation.

FR Vol. 66, No. 240, P. 64358-64367

(Federal motor vehicle safety standards; school bus body joint strength; final rule.)

This action revises the November 5, 1998, National Highway Traffic Safety Administration's final rule amending Standard No. 221, School Bus Body Joint Strength, to make it clearer that the standard applies to small, curved and complex joints, excluding joints that are forward of the passenger component, and to make various other changes in the standard.

TRANSPORTATION DEPARTMENT[761](cont'd)

FR Vol. 66, No. 243, P. 65375

(Federal motor vehicle safety standards; occupant crash protection; final rule.)

This document grants portions of the petitions and denies other portions of the petitions related to the advanced air bag requirements originally published in May 2000.

FR Vol. 67, No. 76, P. 19343-19356

(Federal motor vehicle safety standards; bus emergency exits and window retention and release; final rule.)

This action amends the federal motor vehicle safety standards on bus emergency exits and window retention and release to reduce the likelihood that wheelchair securement anchorages will be installed in locations that permit wheelchairs to be secured where they block access to emergency exit doors.

FR Vol. 67, No. 77, P. 19518-19523

(Federal motor vehicle safety standards; interior trunk release; final rule.)

This document denies requests for exemptions from the referenced rule and also requests for extension of the deadline for compliance. It does, however, increase the speed threshold involved in the performance standard for front opening trunks.

FR Vol. 67, No. 78, P. 19693-19698

(Federal motor vehicle safety standards; prohibitions on sale or lease of defective and noncompliant motor vehicles and items of motor vehicle equipment; final rule.)

This document implements Section 8 of the Transportation Recall Enhancement, Accountability, and Documentation Act (TREAD Act) and Section 2504 of the Intermodal Surface Transportation Efficiency Act (ISTEA).

FR Vol. 67, No. 102, P. 36819-36821

(Federal motor vehicle safety standards; air brake systems; final rule.)

This action deletes an obsolete schematic and descriptive language related to a trailer test rig.

FR Vol. 67, No. 117, P. 41348-41354

(Federal motor vehicle safety standards; head impact protection; interim final rule.)

This interim final rule amends the schedule for compliance by manufacturers of vehicles built in two or more stages with the upper interior head protection requirements of Standard No. 201, occupant protection in interior impact.

FR Vol. 67, No. 190, P. 61523-61531

(Federal motor vehicle safety standards; child restraint systems; final rule.)

This rule amends the requirements for child restraint labels and the written instructions that accompany child restraints. This rule makes changes to the format, location, and content of some of the existing requirements.

FR Vol. 67, No. 204, P. 64818-64825

(Federal motor vehicle safety standards; child restraint systems; interim final rule.)

This document amends the child restraint standard regarding the manufacture and use of vests that hold children in place during a crash.

FR Vol. 67, No. 242, P. 77193

(Federal motor vehicle safety standards; final rule.)

This document updates the outdated addresses in the National Highway Traffic Safety Administration's regulation regarding documents incorporated by reference into various federal motor vehicle standards. In addition, this document properly identifies those organizations identified in the regulation that have been replaced by successor organizations.

FR Vol. 67, No. 249, P. 79416

(Federal motor vehicle safety standards; platform lift systems for accessible motor vehicles, platform lift installation on motor vehicles; final rule.)

This document establishes new Standards 403 and 404 for wheelchair lifts and installations in motor vehicles. The standards will become effective December 27, 2004.

FR Vol. 68, No. 3, P. 504-515

(Federal motor vehicle safety standards; occupant crash protection; final rule.)

This rule makes minor changes in the standards regulating advanced air bags in light vehicles.

FR Vol. 68, No. 21, P. 4961-4965

(Federal motor vehicle safety standards; occupant crash protection; final rule.)

This change reduces the percentage of vehicles that must comply with the first deadline for advanced air bags under the rule originally published in May 2000.

FR Vol. 68, No. 26, P. 6359-6360

(Federal motor vehicle safety standards; school bus body joint strength; correcting amendment.)

This document corrects a typographical error in the amendment to Standard No. 221, school bus body joint strength, published in the Federal Register on December 13, 2001.

FR Vol. 68, No. 77, P. 19752-19754

(Federal motor vehicle safety standards; bus emergency exits and window retention and release; final rule; delay of effective date.)

This document delays the effective date of the final rule that amended the federal motor vehicle safety standard on bus emergency exits and window retention and release published on April 19, 2002.

FR Vol. 68, No. 86, P. 23614-23617

(Federal motor vehicle safety standards; occupant crash protection; final rule.)

This final rule addresses the issue of how to treat limited line manufacturers during the course of the first phase-in for the standard requiring advance air bags in light vehicles.

FR Vol. 68, No. 89, P. 24664-24667

(Federal motor vehicle safety standards; child restraint anchorage systems; final rule; interim final rule.)

This document amends the federal motor vehicle safety standards on child restraint anchorage systems to reflect an extension of the date by which final-stage manufacturers and alterers were required to install tether anchorages in vehicles subject to the standard, and temporarily excludes funeral coaches.

FR Vol. 68, No. 112, P. 34838-34842

(Federal motor vehicle safety standards; occupant crash protection; correcting amendment.)

This rule corrects errors in Figures 6a, 6b, 7, 8, and 9 of Standard No. 208, occupant crash protection.

FR Vol. 68, No. 121, P. 37619

(Federal motor vehicle safety standards; child restraint systems; final rule.)

This document makes a number of revisions to the federal safety standard for child restraint systems, including amendments for incorporating improved test dummies and updated procedures used to test child restraints.

FR Vol. 68, No. 123, P. 37981-37983

(Tire safety information; final rule; correcting amendments.)

This document contains corrections to the final rule published on November 18, 2002, (67 FR 69600) that established a new safety standard to improve the information readily available to consumers regarding tires.

TRANSPORTATION DEPARTMENT[761](cont'd)

FR Vol. 68, No. 123, P. 38115

(Federal motor vehicle safety standards; tires; final rule.)

This rule establishes new and more stringent tire performance requirements that will apply to all new tires for use on light vehicles, i.e., those vehicles with a gross vehicle weight ratio of 10,000 pounds or less, except motorcycles and low-speed vehicles.

FR Vol. 68, No. 124, P. 38208-38231

(Federal motor vehicle safety standards; child restraint systems; child restraint anchorage systems; final rule.)

This document clarifies the final rule establishing Standard No. 225, child restraint anchorage systems.

FR Vol. 68, No. 143, P. 43964-43972

(Federal motor vehicle safety standards; glazing materials; low speed vehicles; final rule.)

This rule updates the federal motor vehicle safety standard on glazing materials so that it incorporates by reference the 1996 version of the industry standard on motor vehicle glazing.

FR Vol. 68, No. 145, P. 44468-44473

(Federal motor vehicle safety standards; side impact protection; fuel system integrity; final rule.)

This rule updates the federal motor vehicle safety standards on side impact protection and fuel system integrity providing that radial tires of certain specifications, instead of bias-ply tires, be used on the moving barriers and also deletes certain outdated inaccurate specifications for the moving barriers in the fuel system integrity standard.

FR Vol. 68, No. 147, P. 44892-44901

(Federal motor vehicle safety standards; definition of multi-function school activity bus; final rule.)

This final rule establishes a new class of school buses, multifunction school activity buses, for use in transporting children on trips other than the buses for use in transporting children between home and school.

FR Vol. 68, No. 154, P. 47485-47497

(Federal motor vehicle safety standards; heavy vehicle anti-lock brake system (ABS) performance requirement; final rule.)

This final rule extends application of the braking-in-a-curve dynamic performance test requirement to single-unit trucks and buses that are required to be equipped with ABS.

FR Vol. 68, No. 157, P. 48572

(Federal motor vehicle safety standards; correction.)

This action removes duplicate text published in the October 1, 2002, Code of Federal Regulations.

FR Vol. 68, No. 161, P. 50077-50079

(Federal motor vehicle safety standards; occupant crash protection; correcting amendment.)

This rule corrects an error in the figure for the removable dash label.

FR Vol. 68, No. 167, P. 51706-51711

(Federal motor vehicle safety standards; head impact protection; interim final rule.)

This interim final rule delays the date on which manufacturers of vehicles built in two or more stages must produce vehicles meeting the upper interior head protection performance requirement of Standard No. 201.

FR Vol. 68, No. 182, P. 54861

(Federal motor vehicle safety standards; child restraint systems; child restraint anchorage systems phase-in reporting requirement; correction; final rule.)

This document contains a correction to the final rule (Docket NHTSA-03-15438) that was published on June 27, 2003. The rule responded to petitions for reconsideration of final rules pertaining to Standard No. 225, child restraint anchorage systems.

FR Vol. 68, No. 187, P. 55544-55545

(Federal motor vehicle safety standards; glazing materials; low speed vehicles; final rule.)

This document delays the effective date of, and makes a correcting amendment to, the final rule published on July 25, 2003, (6 FR 43964) that updates the federal motor vehicle safety standard on glazing materials.

FR Vol. 68, No. 223, P. 65179-65201

(Federal motor vehicle safety standards; occupant crash protection; final rule.)

This document addresses detailed seat and dummy positioning procedures related to the May 2000 advanced air bag rule.

FR Vol. 68, No. 224, P. 65404-65409

(Federal motor vehicle safety standards; tire pressure monitoring systems; controls and displays; amendment in response to court decision; final rule; notice of manufacturer responsibilities and agency plans.)

This document simply revises the Code of Federal Regulations to conform to a court decision, vacating a federal motor vehicle safety standard for tire pressure monitoring systems.

FR Vol. 68, No. 229, P. 66741-66743

(Federal motor vehicle safety standards; child restraint systems; delay of expiration date of interim final rule.)

This document delays the expiration date of the interim final rule published on October 22, 2002, that amended the federal motor vehicle safety standard on child restraint systems to permit the manufacture and sale of harnesses that attach to school bus seat backs.

FR Vol. 68, No. 230, P. 67068-67086

(Federal motor vehicle safety standards; fuel systems integrity; final rule.)

This rule modifies the rear impact test in the federal motor vehicle safety standard on fuel system integrity.

These rules do not provide for waivers. Issuing waivers would be inappropriate for safety-related rules of this matter.

Any person or agency may submit written comments concerning these proposed amendments or may submit a written request to make an oral presentation. The comments or request shall:

1. Include the name, address, and telephone number of the person or agency authoring the comments or request.
2. Reference the number and title of the proposed rule, as given in this Notice, that is the subject of the comments or request.
3. Indicate the general content of a requested oral presentation.
4. Be addressed to the Department of Transportation, Director's Staff Division, 800 Lincoln Way, Ames, Iowa 50010; fax (515)239-1639; Internet E-mail address: tracy.george@dot.state.ia.us.
5. Be received by the Director's Staff Division no later than May 18, 2004.

A meeting to hear requested oral presentations is scheduled for Thursday, May 20, 2004, at 10 a.m. in the Department's Modal Division Conference Room, 800 Lincoln Way, Ames, Iowa.

The meeting will be canceled without further notice if no oral presentation is requested.

These amendments are intended to implement Iowa Code chapter 321.

Proposed rule-making actions:

TRANSPORTATION DEPARTMENT[761](cont'd)

ITEM 1. Amend subrule 911.1(2) as follows:

911.1(2) Information. Information and forms may be obtained from the Department of Transportation, Office of Public Transit, 800 Lincoln Way, Ames, Iowa 50010; telephone (515)239-1708 239-1875.

ITEM 2. Amend rule 761—911.5(321) as follows:

761—911.5(321) Adoption of federal regulations.

911.5(1) Code of Federal Regulations. The department of transportation adopts the following portions of the October 1, 1999 2003, Code of Federal Regulations, which are referenced throughout this chapter:

- a. No change.
- b. No change.
- c. 49 CFR Part 653 655, Prevention of *Alcohol Misuse and Prohibited Drug Use in Transit Operations*.
- d. ~~49 CFR Part 654, Prevention of Alcohol Misuse in Transit Operations.~~

911.5(2) Obtaining copies of regulations. Copies of these regulations are available from the state law library *or through the Internet at <http://www.dot.gov>.*

ITEM 3. Amend subrule 911.6(1), introductory paragraph, as follows:

911.6(1) FTA drug and alcohol testing. Each driver is subject to the following testing for drug and alcohol usage as required by the Federal Transit Administration in 49 CFR ~~Parts 653 and 654~~ *Part 655*, including:

ITEM 4. Amend subrule 911.6(6) as follows:

911.6(6) ~~School bus operator's permit~~ *Authorization to operate a school bus*. Each driver who transports students must have a ~~school bus operator's permit~~ *an authorization to operate a school bus* issued by the department of education in accordance with Iowa Code section 321.376.

ITEM 5. Amend subrule 911.8(1) as follows:

911.8(1) FTA drug and alcohol testing of mechanics. All personnel providing maintenance services on regional transit system vehicles are subject to drug and alcohol testing as required by the Federal Transit Administration in 49 CFR ~~Parts 653 and 654~~ *Part 655*.

ITEM 6. Amend **761—Chapter 911**, implementation clause, as follows:

These rules are intended to implement Iowa Code sections 321.1, 321.189, 321.343, 321.376, 321.377 and 324A.1 and Iowa Code Supplement sections 321.1 and 321.377.

NOTICE—PUBLIC FUNDS INTEREST RATES

In compliance with Iowa Code chapter 74A and section 12C.6, the committee composed of Treasurer of State Michael L. Fitzgerald, Superintendent of Credit Unions James E. Forney, Superintendent of Banking Thomas B. Gronstal, and Auditor of State David A. Vaudt have established today the following rates of interest for public obligations and special assessments. The usury rate for April is 6.00%.

INTEREST RATES FOR PUBLIC OBLIGATIONS AND ASSESSMENTS

74A.2 Unpaid Warrants Maximum 6.00%
74A.4 Special Assessments Maximum 9.00%

RECOMMENDED Rates for Public Obligations (74A.3) and School District Warrants (74A.7). A rate equal to 75% of the Federal Reserve monthly published indices for U.S. Government securities of comparable maturities. All Iowa Banks and Iowa Savings Associations as defined by Iowa Code section 12C.1 are eligible for public fund deposits as defined by Iowa Code section 12C.6A.

The rate of interest has been determined by a committee of the state of Iowa to be the minimum interest rate that shall be paid on public funds deposited in approved financial institutions. To be eligible to accept deposits of public funds of the state of Iowa, a financial institution shall demonstrate a commitment to serve the needs of the local community in which it is chartered to do business. These needs include credit services as well as deposit services. All such financial institutions are required to provide the committee with a written description of their commitment to provide credit services in the community. This statement is available for examination by citizens.

New official state interest rates, effective April 10, 2004, setting the minimums that may be paid by Iowa depositories on public funds are listed below.

TIME DEPOSITS

7-31 days	Minimum 0.70%
32-89 days	Minimum 0.70%
90-179 days	Minimum 0.80%
180-364 days	Minimum 0.90%
One year to 397 days	Minimum 1.10%
More than 397 days	Minimum 1.70%

These are minimum rates only. The one year and less are four-tenths of a percent below average rates. Public body treasurers and their depositories may negotiate a higher rate according to money market rates and conditions.

Inquiries may be sent to Michael L. Fitzgerald, Treasurer of State, State Capitol, Des Moines, Iowa 50319.

NOTICE—USURY

In accordance with the provisions of Iowa Code section 535.2, subsection 3, paragraph "a," the Superintendent of Banking has determined that the maximum lawful rate of interest shall be:

May 1, 2003 — May 31, 2003	5.75%
June 1, 2003 — June 30, 2003	6.00%
July 1, 2003 — July 31, 2003	5.50%
August 1, 2003 — August 31, 2003	5.25%
September 1, 2003 — September 30, 2003	6.00%
October 1, 2003 — October 31, 2003	6.50%
November 1, 2003 — November 30, 2003	6.25%
December 1, 2003 — December 31, 2003	6.25%
January 1, 2004 — January 31, 2004	6.25%
February 1, 2004 — February 29, 2004	6.25%
March 1, 2004 — March 31, 2004	6.25%
April 1, 2004 — April 30, 2004	6.00%
May 1, 2004 — May 31, 2004	5.75%

ARC 3318B**UTILITIES DIVISION[199]****Notice of Termination**

Pursuant to the authority of Iowa Code section 17A.4(1)“b,” the Utilities Board (Board) gives notice that on April 6, 2004, the Board issued an order in Docket No. RMU-03-12, In re: Second Payment Agreements [199 IAC 19.4(10)“c” and 20.4(11)“c”], “Order Terminating Rule Making.” The Board’s order terminated the rule making commenced in this docket on August 15, 2003. The rule making was commenced pursuant to Iowa Code sections 17A.4, 17A.7, 476.1, 476.1A, 476.1B, 476.2, and 476.20, and Notice of Intended Action was published in IAB Vol. XXVI, No. 5 (9/3/03) p. 332, as **ARC 2724B**. The Board commenced the rule making to receive public comment on a petition for rule making filed by the Consumer Advocate Division of the Department of Justice (Consumer Advocate). The petition proposed to amend the Board’s rules by making it mandatory that a utility offer a customer a second payment agreement if the customer defaulted on a first payment agreement.

On August 15, 2003, the provisions concerning second payment agreements were found in an unnumbered paragraph in paragraphs 199 IAC 19.4(10)“c” and 20.4(11)“c.” Since the publication of the proposed amendments, the Board has adopted amendments to its rules that place the provisions in subparagraphs 19.4(10)“c”(5) and 20.4(11)“c”(5).

Written comments were filed by Aquila, Inc., d/b/a Aquila Networks (Aquila), MidAmerican Energy Company (Mid-American), the Iowa Association of Electric Cooperatives (IAEC), the Iowa Association of Municipal Utilities (IAMU), the City of Wayland (Wayland), Consumer Advocate, and Interstate Power and Light Company (IPL). Richard A. Nation and Carol Hoots also filed comments.

An oral presentation was held on November 6, 2003. Mid-American, IAEC, IPL, the Iowa Community Action Association (ICAA), Consumer Advocate, Aquila, IAMU, and the Division of Community Action Agencies, Bureau of Energy Assistance (BEA), made oral comments. Additional comments and statistics were filed by Aquila. Consumer Advocate filed additional information concerning second payment agreements as requested by the Board.

The Board’s order, issued concurrently with this Notice, discusses the comments and the reasons for the Board’s decision to terminate the rule making. The order can be found on the Board’s Web site at www.state.ia.us/iub. The Board found that the proposed amendment to make offering second payment agreements mandatory did not accomplish the primary goal of protecting low-income customers during the winter moratorium. The Board has determined that any change in the requirements for second payment agreements should be addressed as part of a comprehensive review of all cold weather protections. The Board will undertake such a review and determine if additional amendments need to be made to those rules.

Pursuant to the authority of Iowa Code section 17A.4(1)“b,” the Board hereby terminates the proposed rule making published in IAB Vol. XXVI, No. 5 (9/3/03) p. 332, as **ARC 2724B**.

ARC 3316B**UTILITIES DIVISION[199]****Notice of Termination**

Pursuant to the authority of Iowa Code section 17A.4(1)“b,” the Iowa Utilities Board (Board) gives notice that on April 6, 2004, the Board issued an order in Docket No. RMU-03-10, In re: Temperature Trigger for Cold Weather Protections [199 IAC 19.4(15) and 20.4(15)], “Order Terminating Rule Making.” The Board’s order terminated the rule making commenced in this docket on August 6, 2003. The rule making was commenced pursuant to Iowa Code sections 17A.4, 17A.7, 476.1, 476.1A, 476.1B, 476.2, and 476.20, and Notice of Intended Action was published in IAB Vol. XXVI, No. 5 (9/3/03) p. 333, as **ARC 2725B**. The Board commenced the rule making to receive public comment on a petition for rule making filed by the Iowa Community Action Association (ICAA). The petition proposed to amend the Board’s rule by increasing the temperature below which a utility cannot disconnect a customer for nonpayment from 20 degrees Fahrenheit to 32 degrees Fahrenheit.

On August 6, 2003, the temperature trigger was found in subparagraphs 199 IAC 19.4(15)“h”(6) and 20.4(15)“h”(6) and in paragraphs 199 IAC 19.4(15)“i” and 20.4(15)“i.” Since the publication of the Notice of Intended Action, the Board has adopted amendments to its rules that renumbered subparagraphs 19.4(15)“h”(6) and 20.4(15)“h”(6) as subparagraphs 19.4(15)“d”(7) and 20.4(15)“d”(7). Paragraphs 19.4(15)“i” and 20.4(15)“i” have been rescinded.

Written comments concerning the proposed amendments were filed by ICAA, Iowa Legal Aid, the Consumer Advocate Division of the Department of Justice, MidAmerican Energy Company, Interstate Power and Light Company, Aquila, Inc., d/b/a Aquila Networks, the Iowa Association of Electric Cooperatives, the Iowa Association of Municipal Utilities, the City of Wayland, and Richard A. Nation. An oral presentation was held on October 28, 2003.

The Board’s order, issued concurrently with this Notice, discusses the comments and the reasons for the Board’s decision to terminate the rule making. The order can be found on the Board’s Web site at www.state.ia.us/iub. The Board found that the proposed amendment to the temperature trigger is too broad a solution to the problem of protecting low-income customers during extreme cold weather, as it would extend unnecessary protection to other customers. The Board has determined that any change in the temperature trigger should be addressed as a part of a more comprehensive review of all cold weather protections. The Board will undertake such a review and determine if additional amendments need to be made to those rules.

Pursuant to the authority of Iowa Code section 17A.4(1)“b,” the Board hereby terminates the proposed rule making published in IAB Vol. XXVI, No. 5 (9/3/03) p. 333, as **ARC 2725B**.

ARC 3307B

ADMINISTRATIVE SERVICES
DEPARTMENT[11]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code Supplement sections 8A.104 and 8A.413, the Department of Administrative Services hereby amends Chapter 60, "Separations, Disciplinary Actions and Reduction in Force," Iowa Administrative Code.

The purpose of this amendment is to comply with 2004 Iowa Acts, House File 2497, enacted by the Eightieth General Assembly during the Second Regular Session and signed by the Governor on April 2, 2004. 2004 Iowa Acts, House File 2497, establishes a sick leave and vacation incentive program for eligible executive branch employees, requires the adoption of administrative rules, and provides that such rules may be adopted on an emergency basis pursuant to Iowa Code section 17A.4, subsection 2, and section 17A.5, subsection 2, paragraph "b."

In compliance with Iowa Code section 17A.4(2), the Department finds that notice and public participation are impracticable due to the immediate need for rule making to administer the aspects of the program approved by the legislature.

The Department also finds, pursuant to Iowa Code section 17A.5(2)"b"(1) and (2), that the normal effective date of the amendment should be waived and the amendment should be made effective on April 9, 2004, because the statute so provides and because the amendment confers a benefit upon executive branch agencies and employees.

The Department adopted this amendment on April 8, 2004.

This amendment is intended to implement 2004 Iowa Acts, House File 2497, and Iowa Code Supplement section 8A.413.

This amendment became effective on April 9, 2004.

The following amendment is adopted.

Adopt **new** subrule 60.1(6) as follows:

60.1(6) Sick leave and vacation incentive program—Fiscal Year 2005.

a. This termination incentive program is provided for in 2004 Iowa Acts, House File 2497. To be eligible to participate in this program, an employee's length of credited service and the employee's age as of December 31, 2004, but for participation in this program, must equal or exceed 75 years, including buy-back or buy-in service in the Iowa public employees' retirement system (IPERS) or in the public safety peace officers' retirement, accident, and disability system (POR). Employees on the payroll who meet these criteria and who are receiving workers' compensation on and after May 21, 2004, are also eligible to participate.

(1) Age shall be determined in years and quarters of a year.

1. The birth year is subtracted from 2004 to obtain the total years.

2. To calculate quarters:

- If the birth month is January, February, or March, one year shall be added to the total years calculated in 60.1(6)"a"(1)"1";

- If the birth month is April, May, or June, .75 of a year shall be added to the total years calculated in 60.1(6)"a"(1)"1";

- If the birth month is July, August, or September, .50 of a year shall be added to the total years calculated in 60.1(6)"a"(1)"1";

- If the birth month is October, November, or December, .25 of a year shall be added to the total years calculated in 60.1(6)"a"(1)"1."

(2) Length of credited service shall be calculated by IPERS or POR service credit, pursuant to each system's respective rules and regulations.

b. To become a program participant, an employee must complete and file a program application form on or before May 21, 2004, and must terminate employment no earlier than July 2, 2004, but no later than August 12, 2004.

c. For purposes of this program, the following definitions shall apply:

"Employee" means an employee of the executive branch of this state, including an employee of a judicial district of the department of correctional services if the district elects to participate in the program, an employee of the state board of regents if the board elects to participate in the program, and an employee of the department of justice. However, "employee" does not mean an elected official.

"Participating employee" means an eligible employee who, on or before May 21, 2004, submits an election to participate, and does participate, in the sick leave and vacation incentive program established by 2004 Iowa Acts, House File 2497. For the purposes of this program, a person remains a participating employee after payments made hereunder cease.

"Regular annual salary" means the employee's regular bi-weekly salary on the date of termination multiplied by 26.

d. A participating employee will receive an amount equal to the entire value of the employee's accumulated but unused vacation plus the lesser of 75 percent of the value of the employee's accumulated and unused sick leave or 75 percent of the employee's annual salary. The state shall pay to the participating employee a portion of the combined dollar value of the accrued sick leave and annual leave balances each fiscal year, for a period of five years on the following schedule:

(1) Upon termination, in the first fiscal year of the program, the employee shall receive 30 percent of the total cash value of the aforementioned calculation for sick leave and annual leave.

(2) In August of the second through the fourth fiscal years of the program, the employee shall receive 20 percent of the total cash value of the aforementioned calculation for sick leave and annual leave.

(3) In August of the fifth and final fiscal year of the program, the employee shall receive 10 percent of the total cash value of the aforementioned calculation for sick leave and annual leave.

e. A participating employee, as a condition of participation in this program, shall waive any and all rights to receive payment of a sick leave balance pursuant to Iowa Code section 70A.23 and payment for accrued vacation pursuant to Iowa Code section 91A.4 and shall waive all rights to file suit against the state of Iowa, including all of its departments, agencies, and other subdivisions, based on state or federal claims arising out of the employment relationship.

f. The administrative head, manager, supervisor, or any employee of a department, agency, board, or commission of the state of Iowa shall not coerce or otherwise influence any state employee to participate or not participate in this program.

g. In the event a program participant dies prior to receiving the total cash value of the incentive addressed in para-

ADMINISTRATIVE SERVICES DEPARTMENT[11](cont'd)

graph 60.1(6)“d,” the participant’s designated beneficiary or beneficiaries shall receive the remaining payments on the schedule developed for such payments.

h. An employee who elects participation in this program is not eligible to accept any further permanent part-time or full-time employment with the state of Iowa from the date of termination from employment. This prohibition does not apply to a program participant who is later elected to public office.

[Filed Emergency 4/8/04, effective 4/9/04]

[Published 4/28/04]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 4/28/04.

ARC 3306B**INSURANCE DIVISION[191]****Adopted and Filed Emergency**

Pursuant to Iowa Code sections 17A.3 and 507B.12, the Insurance Division hereby amends Chapter 15, “Unfair Trade Practices,” Iowa Administrative Code.

Subrule 15.43(10), regarding diminished value, was originally adopted with an effective date of August 27, 2003. On

August 13, 2003, the Administrative Rules Review Committee voted to delay the effective date of the subrule until the adjournment of the 2004 legislative session. The purpose of this rule making is to rescind the subrule.

In compliance with Iowa Code section 17A.4(2), the Division finds that notice and public participation are unnecessary because the Division has decided to reconsider the subject matter of subrule 15.43(10) and to continue discussions with interested parties.

The Division also finds, pursuant to Iowa Code section 17A.5(2)“b”(2), that the normal effective date of the amendment should be waived and the amendment should be made effective on April 7, 2004, because subrule 15.43(10) must be rescinded before the delay expires at the end of the legislative session.

This amendment is intended to implement Iowa Code chapter 507B.

This amendment became effective April 7, 2004.

The following amendment is adopted.

Rescind subrule **15.43(10)**.

[Filed Emergency 4/7/04, effective 4/7/04]

[Published 4/28/04]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 4/28/04.

ARC 3310B**EDUCATIONAL EXAMINERS
BOARD[282]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 272.2, the Board of Educational Examiners hereby amends Chapter 14, "Issuance of Practitioner's Licenses and Endorsements," Chapter 17, "Renewal of Licenses," Chapter 19, "Coaching Authorization," and Chapter 21, "Behind-the-Wheel Driving Instructor Authorization," Iowa Administrative Code.

These amendments increase fees for practitioner licenses and authorizations. Fees were last increased in 1998 from \$25 to \$50. Most licensure fees will be increased by \$10 for a five-year period, from \$50 to \$60, equating to a \$2 per year increase. The coaching authorization fee is increased from \$10 to \$25 to align with the Board's other authorization fees. The Class E licensure fee is increased from \$100 to \$125.

Notice of Intended Action was published in the Iowa Administrative Bulletin on February 18, 2004, as **ARC 3180B**. A public hearing on the amendments was held on March 11, 2004. No one attended the public hearing, and no written comments were received.

These amendments are identical to those published under Notice.

These amendments are intended to implement Iowa Code chapter 272.

These amendments will become effective June 2, 2004.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [14.121, 17.7(3), 19.5(2), 21.2, 21.5] is being omitted. These amendments are identical to those published under Notice as **ARC 3180B**, IAB 2/18/04.

[Filed 4/8/04, effective 6/2/04]
[Published 4/28/04]

[For replacement pages for IAC, see IAC Supplement 4/28/04.]

ARC 3325B**HUMAN SERVICES
DEPARTMENT[441]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 237.3, the Department of Human Services amends Chapter 112, "Licensing and Regulation of Child Foster Care Facilities," Iowa Administrative Code.

These amendments:

- Set criteria for issuing group foster care facility licenses for terms longer than one year, as authorized by 2002 Iowa Acts, chapter 1102. After the first year of licensure, a facility with only minor or reasonably corrected deficiencies may receive a two-year license, and a facility with no health or safety deficiencies, no founded incidents of abuse, and no serious substantiated complaints may receive a three-year license.

- Add submission of a fraudulent application as grounds for a denial of a license.

- Clarify Department procedures for evaluating a renewal application and for evaluating founded reports of abuse against a facility director, proprietor, or staff member.

- Update form numbers and terminology to reflect the Department's current organization and procedures.

These amendments do not provide for waivers in specified situations because extending the term of licensure is a benefit to facilities and most other changes are technical in nature. Facilities may request a waiver of these rules under the Department's general rule on exceptions at 441—1.8(17A,217).

Notice of Intended Action on these amendments was published in the Iowa Administrative Bulletin on March 3, 2004, as **ARC 3209B**. These amendments are identical to those published under Notice of Intended Action.

The Council on Human Services adopted these amendments on April 7, 2004.

These amendments are intended to implement Iowa Code section 237.5.

These amendments shall become effective on July 1, 2004.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [112.2, 112.3(2), 112.3(4)"a" and "b," 112.3(6), 112.4(3), 112.4(5), 112.4(6), 112.5(1), 112.6(1)] is being omitted. These amendments are identical to those published under Notice as **ARC 3209B**, IAB 3/3/04.

[Filed 4/9/04, effective 7/1/04]
[Published 4/28/04]

[For replacement pages for IAC, see IAC Supplement 4/28/04.]

ARC 3326B**HUMAN SERVICES
DEPARTMENT[441]****Adopted and Filed**

Pursuant to the authority of Iowa Code Supplement section 235.7, the Department of Human Services amends Chapter 202, "Foster Care Services," Iowa Administrative Code.

These amendments implement the legislative directive in 2003 Iowa Acts, chapter 117, for the Department to establish local "transition committees" to review the plans for preparing youth in foster care for the transition to adulthood. Iowa Code Supplement section 232.2(4)"f" requires the agency preparing a case permanency plan for a child 16 years of age or older to include a section on services to assist the child in preparing for the transition from foster care to independent living. The purpose of the local transition committees is to review and approve these plans and to identify and address gaps in the services and supports needed to meet the needs of these youth.

These amendments also:

- Update the term "regional administrator" to "service area manager" and the term "region" to "service area" for consistency throughout the chapter. These amendments reflect the current organization of the Department.

HUMAN SERVICES DEPARTMENT[441](cont'd)

- Update a form number and remove references to obsolete versions of the case permanency plan.

These amendments do not provide for waivers in specified situations because the requirements for the committees are set by statute and the other changes are technical in nature.

Notice of Intended Action on these amendments was published in the Iowa Administrative Bulletin on February 18, 2004, as **ARC 3185B**. The Department received no comments on the Notice of Intended Action.

The Department made one change to the Notice of Intended Action. The following sentence was added to paragraph 202.18(3)"b" to clarify the committee's responsibility when a youth enters foster care after the normal time of the committee review: "When a youth enters foster care at age 17½ or older, the committee shall be involved in reviewing and approving the youth's transition plan within 30 days of completion."

The Council on Human Services adopted these amendments on April 7, 2004.

These amendments are intended to implement Iowa Code Supplement section 235.7.

These amendments shall become effective on June 2, 2004.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [amendments to Ch 202] is being omitted. With the exception of the change noted above, these amendments are identical to those published under Notice as **ARC 3185B**, IAB 2/18/04.

[Filed 4/9/04, effective 6/2/04]
[Published 4/28/04]

[For replacement pages for IAC, see IAC Supplement 4/28/04.]

ARC 3324B**INSURANCE DIVISION[191]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 513B.13(14), the Insurance Division hereby amends Chapter 71, "Small Group Health Benefit Plans," Iowa Administrative Code.

The amendment suspends operations of the Iowa Small Employer Health Reinsurance Program (ISEHRP) until further notice as recommended to the Commissioner of Insurance by the ISEHRP Board of Directors due to the lack of cost-effectiveness, the absence of population reinsured by the program, and the insufficient number and percentage of carriers electing to utilize the program.

The ISEHRP is a not-for-profit entity created under Iowa Code chapter 513B of the Small Employer Health Insurance Reform Act to ensure the availability of appropriate health care coverage to Iowa residents on an affordable basis and to provide a reinsurance mechanism to facilitate the provision of small employer coverage. The ISEHRP reinsures health benefit coverage as specified in Iowa Code chapter 513B, after consideration of applicable deductibles, of small employers' eligible employees and their dependents.

Notice of Intended Action was published in the March 3, 2004, Iowa Administrative Bulletin as **ARC 3206B**. A pub-

lic hearing was held on March 26, 2004. No oral or written comments on the amendment were received.

This amendment is identical to that published under Notice.

This amendment is intended to implement Iowa Code chapter 513B.

This amendment will become effective on June 2, 2004. The following amendment is adopted.

Adopt the following **new** rule:

191—71.25(513B) Suspension of the small employer health reinsurance program. Upon the recommendation of the board of directors of the Iowa small employer health reinsurance program and the findings of the commissioner that the operation of the Iowa small employer health reinsurance program pursuant to Iowa Code chapter 513B is not currently cost-effective, the commissioner suspends the operation of the program, effective January 30, 2004, until further notice. After the effective date of the suspension, the program may continue its administration with regard to handling claims and refunds related to activities prior to the suspension as well as other administrative matters.

This rule is intended to implement Iowa Code section 513B.13(14).

[Filed 4/9/04, effective 6/2/04]

[Published 4/28/04]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 4/28/04.

ARC 3314B**LAW ENFORCEMENT
ACADEMY[501]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 80D.2, the Iowa Law Enforcement Academy with approval of the Iowa Law Enforcement Academy Council hereby amends Chapter 10, "Reserve Officer Weapons Certification," Iowa Administrative Code.

The Iowa State Reserve Law Officer's Association (ISRLOA) requested that the Iowa Law Enforcement Academy (ILEA) adopt personal standards for reserve peace officers. Iowa reserve peace officers are nonregular, sworn members of a law enforcement agency who serve with or without compensation. Reserve peace officers have regular police powers while functioning as representatives of a law enforcement agency. Sworn officers wear uniforms and are most often armed. Reserve peace officers cannot supplant certified peace officers.

Initial meetings were held with the ISRLOA and the Iowa Law Enforcement Academy in fall 2002. The ISRLOA sees the development of personal standards as the necessary first step in an effort to increase the professionalism of Iowa reserve peace officers. The second step will involve a review of the number of required training hours for reserve peace officers. The third step will involve state certification for reserve peace officers.

Meetings were held at ILEA in spring 2003 to request law enforcement agency input concerning personal standards for reserve peace officers. Members from each of the Iowa law enforcement associations were invited to these meetings. Chiefs and sheriffs from various-sized agencies with reserve

LAW ENFORCEMENT ACADEMY[501](cont'd)

officer programs were also invited. Meetings were held on January 16 and February 25, 2003. The Academy and Iowa Law Enforcement Academy Council members received several letters expressing concerns and opinions about the proposed personal standards.

Proposed rules were presented at the ISRLOA annual meeting in spring 2003. The membership approved the requested personal standards as presented at the annual meeting. The rules were presented to the Iowa Law Enforcement Academy Council on April 3, 2003. Bob Taylor, President of ISRLOA, and Sheriff Ted Kamatchus, Marshall County Sheriff's Office, gave the presentation to the Council. Chief Doug Book, Forest City, spoke in favor of the requested standards. Chief Jon Huggins, Colfax, and Chief Aldrich, DeSoto, spoke against the requested standards. The Council requested that the matter be deferred until the June 2003 Council meeting to further discuss the standards and get additional input.

Additional changes were made in the rules following receipt of input. The rules reflect that those individuals currently serving as reserve peace officers will not be required to meet the personal standards. Certified officers who leave active status and become reserve peace officers will be treated similarly to certified officers who move from one agency to another.

Proposed rules were presented at the June 5, 2003, Iowa Law Enforcement Academy Council meeting. The Council approved the decision that a Notice of Intended Action be submitted in order to place the proposed rules before the public for discussion. The proposed rules outlined the personal standards for an individual wanting to serve as a reserve peace officer in Iowa.

An overview of the proposed rules was presented at the fall meeting of the Iowa Police Executive Forum, at the Iowa State Police Association annual meeting, and at several Iowa State Sheriffs' and Deputies' Association board meetings.

Notice of Intended Action was published in the Iowa Administrative Bulletin on November 26, 2003, as **ARC 2978B**. There was a public hearing on December 30, 2003, at 10 a.m. in the conference room at the Iowa Law Enforcement Academy, Camp Dodge, Johnston, Iowa. Meetings were also held at Davenport, Mount Pleasant, Ottumwa, Creston, Red Oak, Shenandoah, Council Bluffs, Sioux City, Primghar, Spirit Lake, Mason City, Marshalltown, Waterloo, Algona, Denison, Fort Dodge, Nevada, Clinton, Dubuque, and Decora. One hundred thirty-four persons attended these meetings. The following paragraphs summarize the comments received and the changes made in response to the comments:

Almost all of the persons in attendance supported the requirement that the individual be a U.S. citizen. There was some discussion concerning non-U.S. citizens being allowed to be reserve peace officers. However, the consensus at each of the meetings was that the individual should be a U.S. citizen.

The residence requirements created much discussion. The consensus at 4 meetings was that only Iowa residents should be allowed to be reserve peace officers. Persons at 2 locations thought there should not be any limitation regarding residence. Persons at 2 locations thought the waiver of residence requirements should be available for applicants residing in all bordering counties and not just the standard metropolitan statistical areas. The consensus at 13 of the meeting sites was that the residence requirements should be left the same as required for regular peace officers. It should be noted that ISRLOA is aware of only one reserve peace officer who currently lives outside the state of Iowa. The residence requirements were adopted with no changes.

The consensus at nearly all of the meeting sites was that the minimum age for applicants should be 18 years of age. Persons at 2 locations wanted the minimum age to be 21.

Persons at 18 of the locations concurred that the individual should have a valid Iowa driver's license. Persons at 3 locations thought a valid driver's license from any state should be accepted.

Persons at all meetings agreed that the individual should not be addicted to drugs or alcohol and that the individual should be of good moral character. In response to a suggestion, "drug sales" was changed to "drug offenses" in subrule 10.100(5).

There was consensus at 5 meetings that physical agility testing should be required, while persons at 15 meetings disagreed and did not believe physical agility testing should be required. Persons at 8 meetings agreed that the medical examination required in subrule 10.100(11) should be used to reflect the individual's capabilities to perform the required duties. As a result of these comments, subrule 10.100(6) was not adopted and subsequent subrules were renumbered.

The requirements for vision testing created more discussion. Persons at 9 meetings supported the proposed subrule regarding vision testing, and believed the proposed standard to be necessary if the individual was going to patrol and have a weapons certification. Persons at 5 meetings disagreed and did not want this standard. It was suggested that the requirement be changed to state that the individual's vision may be corrected to 20/20, and renumbered subrule 10.100(8) was changed as a result.

The hearing standard met with similar discussion. Persons at 8 meetings agreed that the standard should remain as published in the Notice, while persons at 6 meetings believed there should be no standard. It was suggested that the requirement be that the individual's hearing is corrected to normal hearing, and renumbered subrule 10.100(9) was changed as a result.

Persons at 17 meetings believed that a licensed physician or surgeon should examine the individual and certify that the individual meets the physical requirements as defined by the law enforcement agency as necessary to fulfill the responsibilities of the reserve peace officer. Persons at 4 meetings did not believe that a physical examination was necessary.

Persons at 5 meetings supported the requirements that an individual take the MMPI and Stanard & Associates' National Police Officer Selection Test (POST) before being appointed as a reserve peace officer, while persons at 2 meetings did not reach consensus. Persons at 14 meetings disagreed with the requirements primarily due to the costs involved. As a result, proposed rule 10.101(80D) regarding mandatory testing was not adopted, and the subsequent rules were renumbered.

Costs and the potential loss of volunteers were the primary reasons for disagreement with particular areas in the proposed standards. In response, those standards were changed or omitted.

The comments received from the public hearings were presented to the Iowa Law Enforcement Academy Council at the February 23, 2004, regular meeting. Changes that were made following the various meetings were presented and discussed, and approved by the Council.

These rules are intended to implement Iowa Code section 80D.2.

These amendments will become effective June 2, 2004.

The following amendments are adopted.

LAW ENFORCEMENT ACADEMY[501](cont'd)

ITEM 1. Amend **501—Chapter 10**, title, as follows:

RESERVE
OFFICER WEAPONS CERTIFICATION
PEACE OFFICERS

ITEM 2. Adopt the following **new** division title applicable to rules 501—10.1(80D) to 501—10.10(80D):

DIVISION I
RESERVE PEACE OFFICER WEAPONS CERTIFICATION

ITEM 3. Adopt the following **new** division:

DIVISION II
RESERVE PEACE OFFICER PERSONAL STANDARDS

501—10.100(80D) General requirements for reserve peace officers. In no case shall any person hereafter be selected or appointed as a reserve peace officer unless the person:

10.100(1) Is a citizen of the United States and a resident of Iowa or intends to become a resident of Iowa upon appointment as a reserve peace officer. However, with the approval of the Iowa law enforcement academy council, a city located on a state border that is within a standard metropolitan statistical area may allow reserve peace officers to reside in an adjacent state within that statistical area upon written application by the agency administrator to the council showing substantial reason and documenting undue hardship.

10.100(2) Is 18 years of age at the time of selection or appointment.

10.100(3) Has a valid driver's or chauffeur's license issued by the state of Iowa. Reserve peace officers who are allowed to reside in an adjacent state within a standard metropolitan statistical area shall be required to possess a valid driver's or chauffeur's license.

10.100(4) Is not addicted to drugs or alcohol.

10.100(5) Is of good moral character as determined by a thorough background investigation including a fingerprint search conducted on local, state and national fingerprint files, and has not been convicted of a felony or a crime involving moral turpitude. "Moral turpitude" is defined as an act of baseness, vileness, or depravity in the private and social duties which a person owes to another person, or to society in general, contrary to the accepted and customary rule of right and duty between person and person. Moral turpitude is conduct that is contrary to justice, honesty or good morals. The following nonexclusive list of acts has been held by the courts to involve moral turpitude: income tax evasion, perjury, insubordination, theft, indecent exposure, sex crimes, conspiracy to commit a crime, defrauding the government, and illegal drug offenses. The offenses of assault, domestic abuse, or other offenses of domestic violence, stalking, and any offense in which a weapon was used in the commission are crimes involving moral turpitude. Various factors, however, may cause an offense which is generally not regarded as constituting moral turpitude to be regarded as such.

10.100(6) Is not by reason of conscience or belief opposed to the use of force when necessary to fulfill the person's duties.

10.100(7) Is a high school graduate with a diploma, or possesses a GED equivalency certificate.

10.100(8) Has vision corrected to 20/20. Vision tests conducted within 12 months before appointment or selection may be used. A person who performs policing duties alone and without the direct supervision of a certified regular law

enforcement officer who is physically present with the reserve peace officer at all times must have uncorrected vision of not less than 20/100 in both eyes, corrected to 20/20. Policing duties include but are not limited to responding to calls, making traffic stops, and patrolling the jurisdiction.

The applicant shall have color vision consistent with the occupational demands of law enforcement. An applicant's passing any of the following color vision tests indicates that the applicant has color vision abilities consistent with the occupational demands of law enforcement:

a. Pseudoisochromatic plates tests such as but not limited to: Tokyo Medical College, Ishihara, Standard Pseudoisochromatic Plates, Dvorine, American Optical HHR Plates, American Optical.

b. Panels tests such as Farnsworth Dichotomous D-15 Test or any other test designed and documented to identify extreme anomalous trichromatic, dichromatic or monochromatic color vision.

An individual with extreme anomalous trichromatism or monochromasy color vision, as determined through testing, is not eligible to serve as a reserve peace officer in the state of Iowa.

10.100(9) Has hearing corrected to normal hearing standards. Hearing is considered normal when, tested by an audiometer, hearing sensitivity thresholds are within 25dB measured at 1000Hz, 2000Hz and 3000Hz averaged together. Hearing tests conducted within 12 months before appointment or selection may be used. A person who performs policing duties alone and without the direct supervision of a certified regular law enforcement officer who is physically present with the reserve peace officer at all times must have normal hearing in each ear. Policing duties include but are not limited to responding to calls, making traffic stops, and patrolling the jurisdiction.

10.100(10) Is examined by a licensed physician or surgeon and meets the physical requirements as defined by the law enforcement agency necessary to fulfill the responsibilities of the reserve peace officer position being filled.

501—10.101(80D) Reserve peace officers moving from agency to agency.

10.101(1) A reserve peace officer who has previously met all the requirements of rule 10.100(80D) and who intends to move reserve peace officer status from one Iowa law enforcement agency to another Iowa law enforcement agency, or who intends to be a reserve peace officer for more than one Iowa law enforcement agency simultaneously, shall be of good moral character as determined by a thorough background investigation by the law enforcement agency, including, but not limited to, a fingerprint search conducted by the Iowa division of criminal investigation and the Federal Bureau of Investigation. If the results of the fingerprint file checks cannot reasonably be obtained prior to the time of appointment, the appointment shall be considered conditional until such time as the results are received and reviewed by the appointing agency.

10.101(2) Except as otherwise specified, the provisions of rule 10.100(80D) do not need to be reverified upon the movement of reserve peace officer status from one Iowa law enforcement agency to another Iowa law enforcement agency or upon the reserve peace officer's being appointed as a reserve peace officer by more than one Iowa law enforcement agency simultaneously, if the reserve peace officer met all of the requirements of rule 10.100(80D) when the person was initially appointed as a reserve peace officer and if, without a break of not more than 180 days from law enforcement ser-

LAW ENFORCEMENT ACADEMY[501](cont'd)

vice, the person is appointed as a reserve peace officer by another Iowa law enforcement agency.

501—10.102(80D) Active law enforcement officer moving to reserve peace officer status.

10.102(1) An active law enforcement officer who has previously met all the requirements of rule 501—2.1(80B) and who intends to move to reserve peace officer status, or who intends to be a reserve peace officer for more than one Iowa law enforcement agency simultaneously, or who intends to be a reserve peace officer for an Iowa law enforcement agency while also working as an active law enforcement officer shall be of good moral character as determined by a thorough background investigation by the law enforcement agency, including, but not limited to, a fingerprint search conducted by the Iowa division of criminal investigation and the Federal Bureau of Investigation. If the results of the fingerprint file checks cannot reasonably be obtained prior to the time of appointment, the appointment shall be considered conditional until such time as the results are received and reviewed by the appointing agency.

10.102(2) Except as otherwise specified, the provisions of rule 10.100(80D) do not need to be verified upon the movement of active law enforcement officer status to reserve peace officer status or upon an officer's being appointed as a reserve peace officer by more than one Iowa law enforcement agency simultaneously, or upon an officer's being appointed as a reserve peace officer by one Iowa law enforcement agency while serving in active law enforcement status for another agency if the peace officer met all of the requirements of rule 501—2.1(80B) when the person was initially appointed as a peace officer and if, without a break of not more than 180 days from law enforcement service, the person is appointed as a reserve peace officer by another Iowa law enforcement agency.

501—10.103(80D) Reserve peace officers in agencies under intergovernmental agreements. When jurisdictions enter into an intergovernmental agreement under the provisions of Iowa Code chapter 28E for the sharing of law enforcement services by those jurisdictions and sharing of reserve peace officers, the compliance of reserve peace officers with rule 10.100(80D) does not need to be reverified if the execution, filing and recording of the intergovernmental agreement conform to the requirements of Iowa law and a certified copy of the agreement is provided to the director of the academy. However, this exception from reverification does not apply to the establishment of a unified law enforcement district as defined in Iowa Code section 28E.21, wherein a new legal entity or political subdivision is established.

501—10.104(80D) Higher standards not prohibited. A person who does not meet minimum standards shall not be selected or appointed as an Iowa reserve peace officer. Agencies are not limited or restricted in establishing additional standards.

501—10.105(80D) Reserve peace officers appointed before enactment of these rules. These rules apply only to reserve peace officers appointed on or after June 2, 2004.

These rules are intended to implement Iowa Code section 80D.2.

[Filed 4/9/04, effective 6/2/04]

[Published 4/28/04]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 4/28/04.

ARC 3304B**PROFESSIONAL LICENSURE
DIVISION[645]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 147.76, the Iowa Board of Examiners for Nursing Home Administrators hereby amends Chapter 140, "Administrative and Regulatory Authority for the Board of Examiners for Nursing Home Administrators," and rescinds Chapter 144, "Discipline for Nursing Home Administrators," Iowa Administrative Code, and adopts new Chapter 144 with the same title.

The amendments amend the rule regarding public meetings by adopting subrules covering the conduct of persons who attend public meetings. The amendments also adopt a new Chapter 144, which contains updated discipline rules.

The Division sent a draft of the amendments to selected associations and licensees. The Board received comments on the amendments and modified the amendments to address concerns prior to publication of the Notice of Intended Action.

Notice of Intended Action was published in the Iowa Administrative Bulletin on February 4, 2004, as **ARC 3124B**. A public hearing was held on February 24, 2004, from 10 to 11 a.m. in the Fifth Floor Board Conference Room, Lucas State Office Building, Des Moines, Iowa. Public comments were received from the Attorney General's office suggesting that subrule 144.2(3), paragraph "e," be added to reflect statutory language and that subrule 144.2(7), paragraphs "a" and "b," be deleted since the issues are addressed in the new language added in 144.2(3), paragraph "e."

The following changes were made to the amendments published under Notice:

- An item was added to amend requirements for notifying the Board of name and address changes. Subrules 140.4(2) and 140.4(3) are amended and read as follows:

"140.4(2) Notice of change of address. Each licensee shall notify the board of a change of the licensee's current mailing address within 30 days after the change of address occurs.

"140.4(3) Notice of change of name. Each licensee shall notify the board in writing of a change of name within 30 days after changing the name."

- The parenthetical implementation for rule 645—140.6(17A) was changed to "21."

- Subrule 144.2(3), paragraph "e," was changed using language recommended by the Assistant Attorney General. The paragraph now reads as follows:

"e. Inability to practice with reasonable skill and safety by reason of illness, drunkenness, excessive use of drugs, narcotics, chemicals, or other type of material or as a result of a mental or physical condition."

- Paragraphs "a" and "b" of subrule 144.2(7) were not adopted, on advice of the Assistant Attorney General.

These amendments were adopted by the Iowa Board of Examiners for Nursing Home Administrators on April 1, 2004.

These amendments will become effective June 2, 2004.

These amendments are intended to implement Iowa Code chapters 17A, 21, 147, 155 and 272C.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

these amendments [140.4, 140.6, Ch 140 impl. clause, Ch 144] is being omitted. With the exception of the changes noted above, these amendments are identical to those published under Notice as **ARC 3124B**, IAB 2/4/04.

[Filed 4/1/04, effective 6/2/04]
[Published 4/28/04]

[For replacement pages for IAC, see IAC Supplement 4/28/04.]

ARC 3309B**PROFESSIONAL LICENSURE
DIVISION[645]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 147.76, the Board of Optometry Examiners amends Chapter 179, "Administrative and Regulatory Authority for the Board of Optometry Examiners," and Chapter 180, "Licensure of Optometrists"; rescinds Chapter 183, "Discipline for Optometrists," and adopts a new Chapter 183 with the same title; and amends Chapter 184, "Fees," Iowa Administrative Code.

These amendments amend Board contact procedures for address and name changes, adopt subrules regarding conduct of persons attending public meetings, amend license renewal requirements, set the fees charged for duplicate and reissued wallet cards and license certificates, adopt criteria for obtaining a reissued certificate or wallet card license, and adopt a new discipline chapter. Licensees who regularly examine, attend, counsel or treat adults or children will be required at the time of license renewal to have completed a course approved by the Iowa Department of Public Health abuse education review panel regarding abuse identification and reporting.

Notice of Intended Action was published in the Iowa Administrative Bulletin on February 4, 2004, as **ARC 3131B**. A public hearing was held on February 24, 2004, from 9 to 10 a.m. in the Fifth Floor Board Conference Room, Lucas State Office Building, Des Moines, Iowa. Public comments received suggested that subrule 183.2(2), paragraph "e," be changed to reflect statutory language and that subrule 183.2(6), paragraphs "a" and "b," be deleted since the issues are addressed in the new language added in subrule 183.2(2), paragraph "e." A suggestion was also made that language be added to subrule 180.5(1) relating to a licensee's responsibility to pay the biennial renewal fee on or before the renewal date.

The following changes were made to the amendments published under Notice:

- Subrule 179.6(3) was changed on advice of the Assistant Attorney General. The subrule now reads as follows:
"**179.6(3)** The person presiding at a meeting of the board or a committee may exclude a person from an open meeting for behavior that obstructs the meeting."
- Language relating to a licensee's responsibility to pay the biennial renewal fee on or before the renewal date was added to subrule 180.5(1). Subrule 180.5(1) now reads as follows:

"**180.5(1)** The biennial license renewal period for a license to practice optometry shall begin on July 1 of an even-numbered year and end on June 30 two years later. The board shall notify the licensee at the address on record at least 60 days prior to expiration of the license. Failure to receive the

renewal application shall not relieve the licensee of the obligation to pay the biennial renewal fee on or before the renewal date."

- Subrule 183.2(2), paragraph "e," was changed using language recommended by the Assistant Attorney General. The paragraph now reads as follows:

"e. Inability to practice with reasonable skill and safety by reason of illness, drunkenness, excessive use of drugs, narcotics, chemicals, or other type of material or as a result of a mental or physical condition."

- Paragraphs "a" and "b" of subrule 183.2(6) were not adopted on advice of the Assistant Attorney General.

- Rule 645—183.3(147,272C)"7" was changed on advice of the Assistant Attorney General to specify that the licensee is responsible for payment of a board-ordered mental or physical examination or alcohol or drug screening. The paragraph now reads as follows:

"7. Order a physical or mental evaluation, or order alcohol and drug screening within a time specified by the board, to be paid for by the licensee."

These amendments were adopted by the Board of Optometry Examiners on April 8, 2004.

These amendments will become effective June 2, 2004.

These amendments are intended to implement Iowa Code chapters 21, 147, 154 and 272C.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [179.4, 179.6, Ch 179 impl. clause, 180.2(1)"d," 180.5, 180.8 to 180.10, Ch 183, 184.1] is being omitted. With the exception of the changes noted above, these amendments are identical to those published under Notice as **ARC 3131B**, IAB 2/4/04.

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[For replacement pages for IAC, see IAC Supplement 4/28/04.]

ARC 3320B**PUBLIC SAFETY
DEPARTMENT[661]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 103A.7, the Building Code Commissioner, with the approval of the Building Code Advisory Council, hereby amends Chapter 16, "State of Iowa Building Code," Iowa Administrative Code.

Provisions of the State of Iowa Building Code generally apply to buildings owned by the state of Iowa and to buildings and facilities constructed in local jurisdictions which have adopted the State of Iowa Building Code. Hospitals, nursing homes, and health care facilities licensed by the state of Iowa are required to comply with the applicable provisions of the rules of the State Fire Marshal (661—Chapter 5). The provisions of the rules of the State Fire Marshal which apply to hospitals, nursing homes, and other health care facilities are based upon the Life Safety Code, 2000 edition, which is a standard published by the National Fire Protection Association. Hospitals may alternatively be accredited by the Joint Commission on Accreditation of Healthcare Organizations,

PUBLIC SAFETY DEPARTMENT[661](cont'd)

which also requires compliance with the same Life Safety Code requirements. Compliance with applicable requirements of the 2000 edition of the Life Safety Code is also required in order for hospitals, nursing homes, and other health care facilities to be eligible for reimbursement from the federal Medicare and Medicaid programs.

The Uniform Building Code, 1994 edition, which is adopted by reference in the State of Iowa Building Code, includes provisions related to fire protection and means of egress, subjects which are also covered by the Life Safety Code. Compliance with the fire protection and means of egress provisions of both codes simultaneously is difficult and, in some cases, may be impossible. Iowa Code section 100.38 provides that, when a building or facility is subject to the State of Iowa Building Code, and when a provision of the State of Iowa Building Code conflicts with a provision of Iowa Code chapter 100 or the rules of the State Fire Marshal, then the building code provision shall apply, and the conflicting provision of the Fire Marshal rules shall not. However, compliance with the provisions of the Fire Marshal rules is a practical necessity for hospitals, nursing homes, and other licensed health care facilities, even if these provisions conflict with provisions of the State of Iowa Building Code, because compliance with the Life Safety Code requirements is a condition of eligibility for reimbursement from the Medicaid and Medicare programs.

The amendment adopted here relieves hospitals, nursing homes, and other licensed health care facilities which are subject to the State of Iowa Building Code of the necessity of complying with two overlapping and potentially conflicting codes. The amendment provides that these facilities, when subject to the State of Iowa Building Code, would be deemed to be in compliance with the provisions of Chapter 7 (Fire-Resistant Materials and Construction) and Chapter 10 (Means of Egress) and other provisions of the Uniform Building Code, 1994 edition, which are inconsistent with applicable provisions of the Life Safety Code, if the facilities are in compliance with the applicable provisions of the Life Safety Code, 2000 edition.

This amendment was published under Notice of Intended Action in the Iowa Administrative Bulletin on February 18, 2004, as **ARC 3172B**. A public hearing on the proposed amendment was held on March 10, 2004. No comments regarding the amendment were received at the public hearing or otherwise. This amendment was simultaneously Adopted and Filed Emergency and published as **ARC 3171B**, effective February 1, 2004. This amendment is identical to that published under Notice of Intended Action and Adopted and Filed Emergency. The purpose of this rule making is to remove the emergency designation from the language adopted herein.

This amendment will become effective on June 2, 2004, at which time the Adopted and Filed Emergency amendment is hereby rescinded.

This amendment is intended to implement Iowa Code section 103A.7.

The following amendment is adopted.

Amend rule 661—16.130(103A) by adopting the following **new** subrule:

16.130(15) Hospitals and health care facilities.

a. A hospital, as defined in rule 661—5.900(100), that is required to meet the provisions of 661—Chapter 16 shall be deemed to be in compliance with the provisions of the Uniform Building Code, 1994 edition, Chapters 7 and 10, if it is in compliance with the provisions of rule 661—5.905(100). In any other case in which an applicable requirement of the

Life Safety Code, 2000 edition, is inconsistent with an applicable requirement of the Uniform Building Code, 1994 edition, the hospital shall be deemed to be in compliance with the Uniform Building Code requirement if the Life Safety Code requirement is met.

b. A nursing facility or a hospice, as defined in rule 661—5.900(100), that is required to meet the provisions of 661—Chapter 16 shall be deemed to be in compliance with the provisions of the Uniform Building Code, 1994 edition, Chapters 7 and 10, if it is in compliance with the provisions of rule 661—5.910(100). In any other case in which an applicable requirement of the Life Safety Code, 2000 edition, is inconsistent with an applicable requirement of the Uniform Building Code, 1994 edition, the nursing facility or hospice shall be deemed to be in compliance with the Uniform Building Code requirement if the Life Safety Code requirement is met.

c. An intermediate care facility for the mentally retarded, as defined in rule 661—5.900(100), or an intermediate care facility for persons with mental illness that is required to meet the provisions of 661—Chapter 16 shall be deemed to be in compliance with the provisions of the Uniform Building Code, 1994 edition, Chapters 7 and 10, if it is in compliance with the provisions of rule 661—5.915(100). In any other case in which an applicable requirement of the Life Safety Code, 2000 edition, is inconsistent with an applicable requirement of the Uniform Building Code, 1994 edition, the intermediate care facility shall be deemed to be in compliance with the Uniform Building Code requirement if the Life Safety Code requirement is met.

d. An ambulatory health care facility, as defined in rule 661—5.900(100), that is required to meet the provisions of 661—Chapter 16 shall be deemed to be in compliance with the provisions of the Uniform Building Code, 1994 edition, Chapters 7 and 10, if it is in compliance with the provisions of rule 661—5.920(100). In any other case in which an applicable requirement of the Life Safety Code, 2000 edition, is inconsistent with an applicable requirement of the Uniform Building Code, 1994 edition, the ambulatory health care facility shall be deemed to be in compliance with the Uniform Building Code requirement if the Life Safety Code requirement is met.

e. A religious nonmedical health care institution that is required to meet the provisions of 661—Chapter 16 shall be deemed to be in compliance with the provisions of the Uniform Building Code, 1994 edition, Chapters 7 and 10, if it is in compliance with the provisions of rule 661—5.925(100). In any other case in which an applicable requirement of the Life Safety Code, 2000 edition, is inconsistent with an applicable requirement of the Uniform Building Code, 1994 edition, the religious nonmedical health care institution shall be deemed to be in compliance with the Uniform Building Code requirement if the Life Safety Code requirement is met.

[Filed 4/9/04, effective 6/2/04]

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ARC 3317B

UTILITIES DIVISION[199]

Adopted and Filed

Pursuant to Iowa Code sections 17A.4, 476.1, 476.2, 476.3, and 476.6 and Iowa Code Supplement section 476.33, the Utilities Board (Board) on April 8, 2004, issued an order in Docket No. RMU-03-14, In re: Capital Infrastructure Investments and Cost of Capital Changes [199 IAC 7.4(6)“g” and 7.11(2)], “Order Adopting Amendments.” In the order, the Board adopted amendments to implement the provisions of 2003 Iowa Acts, chapter 179, section 134, which has been codified in Iowa Code Supplement section 476.33.

On September 26, 2003, the Board caused a Notice of Intended Action to be published in IAB Vol. XXVI, No. 8 (10/15/03) p. 703, as **ARC 2883B**.

Comments were filed by the Consumer Advocate Division of the Department of Justice (Consumer Advocate), MidAmerican Energy Company (MidAmerican), and Interstate Power and Light Company (IPL). The comments and the support of the revisions made to the proposed amendments are set out in the order and can be found on the Board’s Web site, www.state.ia.us/iub, or in hard copy in the Board’s Record Center, 350 Maple Center, Des Moines, Iowa 50319.

These amendments are intended to implement Iowa Code sections 17A.4, 476.1, 476.2, 476.3, and 476.6 and Iowa Code Supplement section 476.33.

These amendments will become effective June 2, 2004.

The following amendments are adopted.

ITEM 1. Amend paragraph **7.4(6)“g”** as follows:

g. Additional evidence. The applicant may submit any other *testimony*, schedules, exhibits, and data which it deems pertinent to the application.

(1) *Additional evidence may include:*

1. *Testimony, schedules, exhibits, and data concerning the cost of capital infrastructure investments that will not produce significant revenues and will be in service in Iowa within nine months of the test year.*

2. *Testimony, schedules, exhibits, and data concerning cost of capital changes that will occur within nine months after the conclusion of the test year that are associated with a new generating plant that has been the subject of a ratemaking principles proceeding pursuant to Iowa Code section 476.53.*

(2) *The utility shall specifically identify and support the information, including providing an estimate at the time of filing and addressing prudence issues, regarding the changes that will be verifiable within nine months of the test year, with such verification provided to other parties as soon as the data is available. To be considered, the verifiable information must be offered into the record prior to the closing of the record at the hearing in the proceeding.*

(3) *A utility electing to file additional evidence under this paragraph shall include in the reports required in subparagraph 7.4(6)“e”(1) any capital infrastructure investments that will not produce significant revenues and have been placed in service in Iowa, or capital issuances that have been completed that are associated with a new generating plant that has been the subject of a ratemaking principles proceeding pursuant to Iowa Code section 476.53.*

(4) *A utility electing to file additional evidence under this paragraph shall provide additional schedules as required by subparagraphs 7.4(6)“e”(13), (14), and (15) related to capital issuances that have been completed that are associated*

with a new generating plant that has been the subject of a ratemaking principles proceeding pursuant to Iowa Code section 476.53.

Subparagraphs 7.4(6)“g”(1) through (4) are repealed effective July 1, 2007. However, any proceeding that is pending on July 1, 2007, that is being conducted pursuant to Iowa Code section 476.3 or 476.6 shall be completed as if subparagraphs 7.4(6)“g”(1) through (4) had not been repealed. Upon repeal of subparagraphs 7.4(6)“g”(1) through (4), the board may still consider the adjustments addressed in those subparagraphs, but shall not be required to consider them.

ITEM 2. Amend subrule 7.11(2) as follows:

7.11(2) Known and measurable changes. In rate regulatory proceedings under Iowa Code sections 476.3 and 476.6, the board shall consider:

a. ~~verifiable~~ *Verifiable* data, existing as of the date of commencement of the proceedings, respecting known and measurable changes in costs not associated with a different level of revenue and known and measurable revenues not associated with a different level of costs, that are to occur within 12 months after the date of commencement of the proceedings.

b. *Data which becomes verifiable prior to the closing of the record at the hearing respecting known and measurable:*

(1) *Capital infrastructure investments that will not produce significant additional revenues and will be in service in Iowa within nine months after the conclusion of the test year.*

(2) *Cost of capital changes that will occur within nine months after the conclusion of the test year that are associated with a new generating plant that has been the subject of a ratemaking principles proceeding pursuant to Iowa Code section 476.53.*

Verifiable data filed pursuant to paragraph 7.11(2)“b” shall be provided to other parties as soon as the data is available so that other parties have a reasonable opportunity to verify the data to be considered by the board.

Paragraph 7.11(2)“b” is repealed effective July 1, 2007. However, any proceeding that is pending on July 1, 2007, that is being conducted pursuant to Iowa Code section 476.3 or 476.6 shall be completed as if paragraph 7.11(2)“b” had not been repealed. Upon repeal of paragraph 7.11(2)“b,” the board may still consider the adjustments addressed in the paragraph, but shall not be required to consider them.

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ARC 3319B

UTILITIES DIVISION[199]

Adopted and Filed

Pursuant to Iowa Code sections 17A.4, 476.1, 476.2, 476.10, 476.86, and 476.87, the Utilities Board (Board) issued an order on April 8, 2004, in Docket No. RMU-03-6, In re: Revisions to Small Volume Gas Transportation Service Rules [19.13(4)“e,” 19.13(4)“f,” 19.13(6), and 19.14(5)“d”], “Order Adopting Amendments.” The proposed amendments were designed to comply with the Board’s order in Docket No. NOI-98-3 in which the Board closed the inquiry into the development of a comprehensive plan to allow small volume customers, including residential customers, to transport natu-

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ral gas. In closing Docket No. NOI-98-3, the Board directed that paragraphs 199 IAC 19.13(4)“e,” 19.13(4)“f,” and 19.14(5)“d” be rescinded and subrule 19.13(6) be amended.

On October 15, 2003, Notice of Intended Action was published in IAB Vol. XXVI, No. 8 (10/15/03) p. 704, as **ARC 2882B**. Comments concerning the proposed rescissions and amendments were filed by the Consumer Advocate Division of the Department of Justice, MidAmerican Energy Company, Interstate Power and Light Company, and Cornerstone Energy, Inc. A summary of the comments filed and the amendments adopted can be found in the Board’s order located on the Board’s Web site, www.state.ia.us/iub, or in hard copy in the Board’s Record Center, 350 Maple Center, Des Moines, Iowa 50319. The Board determined based upon the comments that the proposed amendment to subrule 19.13(6) should not be adopted. The Board adopted the other proposed amendments.

These amendments are intended to implement Iowa Code sections 17A.4, 476.1, 476.2, 476.10, 476.86, and 476.87.

These amendments will become effective June 2, 2004.

The following amendments are adopted.

ITEM 1. Rescind paragraph **19.13(4)“e.”**

ITEM 2. Rescind paragraph **19.13(4)“f.”**

ITEM 3. Rescind paragraph **19.14(5)“d.”**

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